

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 1328

INTRODUCER: Senator Latvala

SUBJECT: Inspectors General

DATE: March 25, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1328 modifies how the Chief Inspector General and agency inspectors general are appointed, supervised, and removed. Currently, the Chief Inspector General is appointed and removed solely by the Governor. The bill makes the Governor's appointment of a Chief Inspector General subject to consultation by the Cabinet and confirmation by the Senate, and removal of the Chief Inspector General may be done only by unanimous vote of the Governor and Cabinet.

Currently, agency inspectors general are appointed by and report to agency heads. The bill provides that for agencies under the jurisdiction of the Governor, agency inspectors general are to be appointed and removed (only for cause) by the Chief Inspector General, with notice to the Governor and Cabinet; are to report to the Chief Inspector General; and may hire and fire their staff independently of the agency. Offices of inspectors general are to have their own budgets within the agencies, and, for agencies under the jurisdiction of the Governor, must be provided independent legal counsel by the Chief Inspector General.

**II. Present Situation:**

**Chief Inspector General**

Section 14.32, F.S., creates in the Executive Office of the Governor the Office of Chief Inspector General. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor. The Chief Inspector General is appointed by and serves at the pleasure of the Governor, and serves as the inspector general for the Executive Office of the Governor. The Chief Inspector General must:

- Initiate investigations, recommend policies, and carry out other activities designed to deter, detect, and prevent fraud, waste, mismanagement, and misconduct in government.
- Investigate any administrative action of any agency under the direct supervision of the Governor.
- Request assistance and information as necessary for the performance of the duties.

- Examine the records and reports of any agency under the direct supervision of the Governor.
- Coordinate complaint-handling activities with agencies.
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline.
- Report to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are grounds to believe that there has been a violation of criminal law or that a civil action should be initiated.
- Act as liaison with outside agencies and the Federal Government to promote accountability, integrity, and efficiency in state government.
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction.
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor.
- Conduct special investigations and management reviews at the request of the Governor.

The Chief Inspector General has various duties relating to public-private partnerships, including advising on internal controls, conducting audits, investigating complaints of fraud, and making recommendations for improvements in the actions taken by public-private partnerships to meet performance standards.

### **Agency Inspectors General**

#### *Duties*

Section 20.055, F.S., requires that each state agency<sup>1</sup> created in the organizational structure of state government have an inspector general office contained within the agency. The office is created to provide a focal point of accountability efforts within the agency. Each office is responsible for the following:

- Advising in the development of performance standards, their validation, and the compliance of agency activities with them.
- Assessing the reliability and validity of information provided by the agency on performance measures and standards.
- Improving agency performance.
- Supervising and coordinating audits, investigations, and reviews relating to the operations of the state agency.
- Conducting, supervising, or coordinating other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.
- Providing central coordination of efforts to identify and remedy waste, fraud, and abuse.
- Coordinating agency-specific audit activities with those of peer federal and state agencies.
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact.

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<sup>1</sup> For purposes of this section, the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation, the Office of Financial Regulation, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, and the state courts system are considered "state agencies," in addition to the departments created in Ch. 20, F.S.

- Maintaining a balance among audit, investigative, and other accounting activities of the agency.
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.<sup>2</sup>

### ***Appointment***

Inspectors general are appointed by the agency head. For agencies under the direction of the Governor, the appointment must be made after notifying the Governor and the Chief Inspector General in writing, at least seven days prior to an offer of employment, of the agency head's intention to hire the inspector general.<sup>3</sup>

### ***Removal and Qualifications***

Inspectors general may be removed only by the agency head. For agencies under the direction of the Governor, the agency head must notify the Governor and the Chief Inspector General, in writing, of the intention to terminate the inspector general, at least seven days prior to the removal. For state agencies under the direction of the Governor and Cabinet, the agency head must notify the Governor and Cabinet, in writing, of the intention to terminate the inspector general, at least seven days prior to the removal.<sup>4</sup> Inspectors general must possess minimum educational and experience qualifications,<sup>5</sup> and the investigations they conduct must adhere to specific internal auditing standards.

### ***Internal Audits***

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.

Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards published by the Institute of Internal Auditors, Inc., or, where appropriate, in accordance with generally accepted governmental auditing standards. All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.<sup>6</sup>

Audit work papers and reports must be public records to the extent that they do not include information that has been made confidential and exempt from the provisions of

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<sup>2</sup> Section 20.055(2), F.S.

<sup>3</sup> Section 20.055(3)(a), F.S.

<sup>4</sup> Section 20.055(3)(c), F.S.

<sup>5</sup> Section 20.055(4), F.S.

<sup>6</sup> Section 20.055(5)(a), F.S.

s. 119.07(1), F.S., or information protected under s. 112.3187(5), F.S., of the Whistle-blower's Act.<sup>7</sup>

### ***Reporting***

At the conclusion of each audit, the inspector general must submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who must respond to any adverse findings within 20 working days after receipt of the tentative findings. Such response and the inspector general's rebuttal to the response must be included in the final audit report.<sup>8</sup>

The inspector general must submit the final report to the agency head and to the Auditor General. The Auditor General, in connection with the independent post-audit of the same agency, must give appropriate consideration to internal audit reports and the resolution of findings therein. The Legislative Auditing Committee may inquire into the reasons or justifications for failure of the agency head to correct the deficiencies reported in internal audits that are also reported by the Auditor General and must take appropriate action.<sup>9</sup>

The inspector general must monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability (OPPAGA). No later than six months after the Auditor General or the Office of Program Policy Analysis and Government Accountability publishes a report on the state agency, the inspector general must provide a written response to the agency head on the status of corrective actions taken. The inspector general must file a copy of such response with the Legislative Auditing Committee.<sup>10</sup>

### ***More Duties***

The inspector general must develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include post-audit samplings of payments and accounts. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands related to claims against the state, and examining, auditing, adjusting, and settling accounts relating to those indebted to the state, may utilize audits performed by the inspectors general and internal auditors. For state agencies under the Governor, the audit plans shall be submitted to the Governor's Chief Inspector General. The plan must be submitted to the agency head for approval, and a copy of the approved plan must be submitted to the Auditor General.<sup>11</sup>

In carrying out its investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.

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<sup>7</sup> Section 20.055(5)(b), F.S.

<sup>8</sup> Section 20.055(5)(d), F.S.

<sup>9</sup> Section 20.055(5)(g), F.S.

<sup>10</sup> Section 20.055(5)(h), F.S.

<sup>11</sup> Section 20.055(5)(i), F.S.

For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower’s Act.
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower’s Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate.
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law.
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general’s office. This must include freedom from any interference with investigations and timely access to records and other sources of information.
- At the conclusion of an audit the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report.
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.<sup>12</sup>

Each inspector general must submit a yearly report on its activities to the agency head, and provide any written complaints about the operations of the inspector general.<sup>13</sup>

**III. Effect of Proposed Changes:**

**Chief Inspector General**

**Section 1** amends s. 14.32, F.S., to change how the Chief Inspector General is appointed and removed. Currently, the Governor appoints the Chief Inspector General, who serves, without a statutorily-prescribed term, at the pleasure of the Governor. The bill requires that the Chief Inspector General be appointed, for a term of four years, by the Governor in consultation with the Cabinet, subject to confirmation by the Senate, and removable by unanimous vote of the Governor and Cabinet.

	<b>Current Law</b>	<b>Bill</b>
<b>Appointed by</b>	Governor	Governor, in consultation with Cabinet
<b>Confirmation by Senate</b>	No	Yes
<b>Term</b>	Not specified	4 years
<b>Removable by</b>	Governor	Unanimous vote of Governor and Cabinet

The Chief Inspector General must also provide for independent legal counsel for inspectors general in agencies under the jurisdiction of the Governor.

<sup>12</sup> Section 20.055(6), F.S.

<sup>13</sup> Section 20.055(7) and (8), F.S.

## **Agency Inspectors General**

**Section 2** amends s. 20.055, F.S., relating to the duties of agency inspectors general.

### ***Appointment***

The bill changes the appointment process for agency inspectors general, who are currently appointed by the agency head. The bill provides that for state agencies under the jurisdiction of a Cabinet officer or the Governor and Cabinet, the agency head appoints the inspector general; for state agencies under the jurisdiction of the Governor, the Chief Inspector General appoints the agency inspector general. The Chief Inspector General must notify the Governor and Cabinet in writing seven days in advance of the hiring of an agency inspector general.

### ***Supervision***

For state agencies under the jurisdiction of the Governor, the inspector general will report to the Chief Inspector General and may hire and remove staff within the Office of the Inspector General in consultation with the Chief Inspector General but independently of the respective agency. Inspectors general are not subject to supervision by any other agency employee.

### ***Removal***

For state agencies under the jurisdiction of a Cabinet officer or the Governor and Cabinet, the agency head may remove the inspector general. For state agencies under the jurisdiction the Governor and Cabinet, the agency head must give 21 days' notice to the Governor and Cabinet before removing an inspector general. For state agencies under the jurisdiction of the Governor, the agency inspector general may only be removed from office, for cause, by the Chief Inspector General, with notice to the Governor and Cabinet at least 21 days before removal.

### ***Budget***

Within each agency, the Office of Inspector General must have its own budget, developed in consultation with the Chief Inspector General, and sufficient to meet its mission.

### ***Reports and Responses to Reports***

For state agencies under the jurisdiction of the Governor, the agency inspector general must submit:

- Final reports to the agency head, the Auditor General, and the Chief Inspector General; and
- Responses to OPPAGA and Auditor General reports to the Chief Inspector General; and
- Annual reports on inspector general activities to the Chief Inspector General.

The inspector general of the Florida Finance Housing Corporation must submit an annual report to the Chief Inspector General.

The bill takes effect July 1, 2014.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill requires that budgets for state agency offices of inspectors general be separate from the budgets of the relevant agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Lines 93-102 specify that inspectors general in Governor's agencies report to the Chief Inspector General. The bill does not explicitly provide that inspectors general in Cabinet agencies report to the agency head, though it does provide that the inspector general may be removed by the agency head.

Lines 103-111 provide that inspectors general in Governor's agencies may only be removed for cause. The bill does not specify a standard for removal of inspectors general in Cabinet agencies.

Lines 128-131 could be clearer in providing that the Chief Inspector General consults with offices of inspectors general in development of their budgets.

The Chief Inspector General is also the inspector general for the Executive Office of the Governor (EOG), so operation of the bill's provisions is unclear in relation to the Chief Inspector General's duties related to the EOG.

**VIII. Statutes Affected:**

This bill substantially amends sections 14.32 and 20.055 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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