

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1681 w/CS      Duties of Agency Inspectors General  
**SPONSOR(S):** Rivera  
**TIED BILLS:** HB 1691                      **IDEN./SIM. BILLS:** SB 2900

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) <u>Judiciary</u>	<u>17 Y, 0 N w/CS</u>	<u>Thomas</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The bill designates the inspector general of each agency as the investigator for whistle-blower investigations, and removes that responsibility from the agency head. The bill authorizes the agency inspector general to access any records, data, or other information of a state agency he or she deems necessary to carry out his or her duties, and to compel by subpoena production of such records, data, or other information as necessary to complete an investigation of a private entity.

This bill does not create, modify, or eliminate a state revenue source, and does not have a negative fiscal impact on state revenue. This bill does not have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Not applicable.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Current law establishes an Office of Inspector General in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government.<sup>1</sup> Each inspector general, in carrying out his or her investigate duties and responsibilities, must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses.<sup>2</sup>

Each inspector general is also responsible for receiving "whistle-blower information".<sup>3</sup> The law governing whistle-blower investigations, however, is inconsistent with regards to receipt of such information and conducting investigations regarding such information. Inspectors general are designated as the recipients of such information; however, the agency head is given the responsibility of conducting the investigation. Agency inspector generals do not have the statutory authority to issue subpoenas to compel the production of documents.

##### Effect of Bill

The bill amends s. 20.055(6), F.S., to designate the inspector general of each agency as the investigator for whistle-blower investigations, and removes that responsibility from the agency head. It also makes the necessary conforming changes regarding such designation. The amendments to this section authorize each agency inspector general, as part of his or her duties, to access any records, data, or other information of an agency he or she deems necessary to carry out his or her duties, and to request information or assistance as may be necessary from a state agency or from any federal, state or local governmental entity. In addition, the inspector general may compel by subpoena private entities to produce all "information, documents, reports, answers, records, accounts, papers, and other date and documentary evidence necessary in the performance" of his or her functions. The subpoena is enforceable by order of a state court of competent jurisdiction. Subpoenas may not be used to obtain documents and information from state agencies.

The bill amends s. 112.3189(1), F.S., to require the head of a state agency that does not have an inspector general to appoint a person who meets the qualifications required for a state agency

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<sup>1</sup> Section 20.055(2), F.S.

<sup>2</sup> Section 20.055(6), F.S.

<sup>3</sup> Section 112.3189, F.S.

inspector general or the director of auditing within an inspector general's office, to receive information relating to whistle-blower complaints.<sup>4</sup> The amendments to this section conform existing provisions of law to the changes proposed by this bill.

C. SECTION DIRECTORY:

**Section 1:** Amends s. 20.055(6), F.S., relating to agency inspector generals.

**Section 2:** Amends s. 112.3189, F.S., relating to investigative procedures upon receipt of whistle-blower information.

**Section 3:** Provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, or eliminate a state revenue source.

2. Expenditures:

None. This bill does not have a negative impact on state revenue.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not regulate the conduct of persons in the private sector.

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<sup>4</sup> These qualifications, as provided in s. 20.055(4), F.S., are :

(4) To ensure that state agency audits are performed in accordance with applicable auditing standards, the inspector general or the director of auditing within the inspector general's office shall possess the following qualifications:

(a) A bachelor's degree from an accredited college or university with a major in accounting, or with a major in business which includes five courses in accounting, and 5 years of experience as an internal auditor or independent postauditor, electronic data processing auditor, accountant, or any combination thereof. The experience shall at a minimum consist of audits of units of government or private business enterprises, operating for profit or not for profit; or

(b) A master's degree in accounting, business administration, or public administration from an accredited college or university and 4 years of experience as required in paragraph (a); or

(c) A certified public accountant license issued pursuant to chapter 473 or a certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and 4 years of experience as required in paragraph (a).

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create the need for rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Committee on Judiciary adopted one amendment to this bill at its meeting on March 24, 2004. The amendment removed a provision in the bill which amended s. 112.31895(3)(b), F.S., to increase from 15 to 30 the number of days allotted the Florida Commission on Human Relations to determine whether it is appropriate to temporarily reinstate an employee discharged for disclosing protected information received pursuant to the Whistle-blower's Act.