

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Judiciary Committee

BILL: CS/CS/SB 1632

INTRODUCER: Judiciary Committee, Governmental Oversight and Productivity Committee, and Senator Bennett

SUBJECT: Agency Inspectors General

DATE: April 27, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	Fav/CS
2.	Chinn	Maclure	JU	Fav/CS
3.				
4.				
5.				
6.				

I. Summary:

The bill creates the Council on State Agency Inspectors General (the council) in the Office of Chief Inspector General within the Executive Office of the Governor. The council will consist of five members comprised of four inspectors general from other state agencies who are appointed by the Governor and the Chief Inspector General, who will serve as the council's chairperson. The council will meet monthly to develop recommendations relating to the creation of an independent review process for investigations and audits conducted by the state agency inspectors general. The bill requires the council to report its recommendations to the Governor and legislative officers by January 1, 2007.

This bill creates section 14.325, Florida Statutes.

II. Present Situation:

Agency Inspectors General

Section 20.055, F.S., requires that each state agency¹ 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 responsible for:

¹ 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, and the state courts system are considered "state agencies."

- 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; and
- Maintaining a balance among audit, investigative, and other accounting activities of the agency.

Inspectors general are appointed by the respective agency head, and they may be removed only by the agency head after seven days' prior notification of the Governor or the Governor and Cabinet, depending on the agency.

Inspectors general must possess minimum educational and experience qualifications, and the investigations they conduct must adhere to specific internal auditing standards. Final reports are submitted to the agency head and the Auditor General, whose office is directed to give official recognition to their findings and recommendations as part of its post-audit responsibilities.

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.

Audit workpapers 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 s. 119.07(1), F.S., or information protected under s. 112.3187(5), F.S. of the Whistle-blower's Act.

The inspector general must have access to any records, data, and other information of the state agency he or she deems necessary to carry out his or her duties. The inspector general is also authorized to request such information or assistance as may be necessary from the state agency or from any federal, state, or local government entity.

Section 20.055(5)(d), F.S., provides that 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. 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 postaudit 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.

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. 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.

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 postaudit 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.

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. For these purposes, each state agency must:

- 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; and
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.

Each inspector general must submit a yearly report on its activities to the agency head.

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

- Undertaking investigations and recommending policies designed to deter, detect, prevent, and eradicate fraud, waste, abuse, mismanagement, and misconduct in government;
- Investigating any administrative action of any agency under the direct supervision of the Governor;
- Examining the records and reports of any agency under the supervision of the Governor;
- Requesting assistance and information as needed;
- Coordinating complaint-handling activities with agencies;
- Coordinating the activities of the Whistle-blower's Act pursuant to ch. 112, F.S., and maintaining the Whistle-blower's hotline to receive complaints and information concerning the possible violation of statutory law or administrative rules, mismanagement, fraud, waste, abuse of authority, malfeasance, or a substantial or specific danger to the health, welfare, or safety of the public;
- Working with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are recognizable grounds to believe that there has been a violation of criminal law or that a civil action should be initiated;
- Acting as liaison with outside agencies and the Federal Government to promote accountability, integrity, and efficiency in state government;
- Acting as liaison and monitoring the activities of the inspectors general in the agencies under the Governor's jurisdiction;
- Reviewing, evaluating, and monitoring the policies, practices, and operations of the Executive Office of the Governor; and
- Conducting special investigations and management reviews at the request of the Governor.

Responses to Auditor General and OPPAGA Reports

Pursuant to s. 11.45, F.S., the Auditor General conducts financial audits, operational audits, and performance audits of any governmental entity created or established by law. At the conclusion of the audit, the Auditor General or designated representative must discuss the audit with the official whose office is subject to audit and submit to that official a list of the Auditor General's findings which may be included in the audit report. The official must submit to the Auditor General, within 30 days after the receipt of the list of findings, his or her written statement of explanation or rebuttal concerning all of the findings, including corrective action to be taken to preclude a recurrence of all findings. The Auditor General includes the response of the audited entity in final reports, in conformity with government auditing standards.

Pursuant to s. 11.51, F.S., the Office of Program Policy Analysis and Government Accountability (OPPAGA) performs independent examinations and program reviews of all entities and records that the Auditor General is authorized to examine. At the conclusion of an OPPAGA examination, the designated representative of the director of the OPPAGA must discuss the examination with the official whose office is examined and submit to that official the OPPAGA's preliminary findings. If the official is not available for receipt of the preliminary findings, delivery is presumed to be made when it is delivered to his or her office. Whenever necessary, the OPPAGA may request the official to submit his or her written statement of explanation or rebuttal within 15 days after the receipt of the findings. If the response time is not requested to be within 15 days, the official shall submit his or her response within 30 days after receipt of the preliminary findings. The OPPAGA includes in its final reports the written responses of the examined entities, though not specifically required to do so by statute.

III. Effect of Proposed Changes:

The bill creates the Council on State Agency Inspectors General (the council) in the Office of Chief Inspector General within the Executive Office of the Governor. The council will consist of five members comprised of four inspectors general from other state agencies who are appointed by the Governor and the Chief Inspector General, who will serve as the council's chairperson.

The council will convene monthly, and three members of the council must be present for a quorum. The purpose of the meetings is for the council to develop recommendations for the creation of an independent review process for investigations and audits conducted by state inspectors general. At a minimum, the process recommended by the council must:

- Offer entities contracting with state agencies and individuals substantially affected by the findings, conclusions, or recommendations a meaningful opportunity to challenge in writing the findings, conclusions, and recommendations contained in a final agency inspector general's report;
- Identify entities and individuals entitled to submit a response and the circumstances under which the response must be attached to the final report;
- Provide a hearing process entitling these entities to present additional material relevant to the agency inspector general's report to the Chief Inspector General and provide for independent investigation by the Chief Inspector General of the agency's final report; and

- Identify any ancillary issues that need to be addressed in conjunction with the proposal of an independent review process.

The council must report its findings to the Governor and legislative officers by January 1, 2007. The report may include suggested statutory amendments; proposals for administrative rulemaking to be implemented; and other guidelines, procedures, and suggestions relevant to the creation of the review process. The bill provides a sunset provision of June 30, 2007.

The bill provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of Chief Inspector General within the Executive Office of the Governor will be required to provide the administrative support for the new council created by the bill. The cost for the administration of the council, if any, is not known at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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