



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill creates an additional hearing process in the investigatory processes of agency inspectors general.

**Safeguard individual liberty** – The bill provides a hearing process for individuals under investigation by an agency.

#### B. EFFECT OF PROPOSED CHANGES:

##### Agency Inspectors General

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 auditing duties and responsibilities, must review and evaluate internal controls necessary to ensure the fiscal accountability of the agency; conduct financial, compliance, electronic data processing, and performance audits of the agency; and prepare audit reports of his or her findings.<sup>2</sup> In carrying out his or her investigative duties and responsibilities, the inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses.<sup>3</sup> Agency investigations may involve processes and procedures of an agency, or may involve the actions of specific employees, vendors, or other individuals or entities.

##### Inspector General Working Materials

Audit workpapers and reports of the inspector general are public records less any confidential and exempt information.<sup>4</sup> However, when a complaint has been received by the inspector general, the name or identity of the individual filing the complaint must not be disclosed without the individual's written consent, unless disclosure is unavoidable during the course of an audit or investigation.<sup>5</sup>

##### Agency Hearings

The Florida Administrative Procedure Act (APA)<sup>6</sup> creates rights for administrative hearings for entities substantially affected by final agency actions. "Agency action" means "the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request [of a petition to initiate rulemaking]."<sup>7</sup>

Section 120.62, F.S., "Agency Investigations," provides that every person responding to an agency request or demand for written information or an oral statement is entitled to a transcript or recording of such oral statement at no more than cost. The section also provides that any person compelled to appear, or who appears voluntarily, before an agency is entitled to legal counsel or other qualified representatives.

##### Proposed Changes

The bill amends s. 20.055, F.S., to allow hearings challenging an inspector general's findings. Specifically, the bill requires each agency to:

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

<sup>2</sup> Section 20.055(5), F.S.

<sup>3</sup> Section 20.055(6), F.S.

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

<sup>5</sup> *Id.*

<sup>6</sup> Codified in Chapter 120, F.S.

<sup>7</sup> Section 120.52(2), F.S.

Provide a meaningful opportunity, including the right to an impartial hearing, to challenge findings... contained in a report resulting from an inquiry, investigation, audit, or review before it is finalized and made public....”

The challenger’s response must be attached to the inspector general’s final report, and delivered to any party requesting such report.

The bill also directs the Chief Inspector General in the Executive Office of the Governor<sup>8</sup> to develop procedures “by which all inspectors general will fully implement” this requirement. The initial procedures must be completed within 120 days after the effective date of the law, but no later than September 30, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 20.055, F.S., to create a right to hearing for individuals under investigation by an agency inspector general.

Section 2 provides an effective date of upon becoming a law, except for the procedures to be developed by the Executive Office of the Governor, which take effect on October 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The cost of this change will depend upon the determination of what constitutes an “impartial hearing”.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The counties will be required to send return receipt letters to delinquent filers at a cost of \$1.85 per letter.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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<sup>8</sup> Created by s. 14.32, F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill does not currently provide any rulemaking authority, but see "Rulemaking concerns" in "Drafting Issues or Other Comments," below.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Inspector General Autonomy

Section 20.055(3)(b), F.S., states that each inspector general "shall not be subject to supervision by any other employee of the state agency." Section 20.055(3)(d), F.S., states that the "agency head shall not prevent or prohibit the inspector general... from initiating, carrying out, or completing any audit or investigation." The purpose of these statutes is to ensure that employees of the agency, including the agency head, may not interfere in the operation of an inspector general investigation. This bill may create an opportunity for any employee, or any other entity related to the agency and subject to possible investigation, to hinder or delay inspector general obligations under s. 20.055, F.S., by repeatedly requesting hearings on each finding made by an inspector general during his or her investigation. Section 20.055(5)(d), F.S., provides a 'draft and response' procedure for audits of operational units inside the agency. It may be advisable to attempt to create a similar procedure for other investigations, rather than the current "impartial hearing" legislation.

##### Standing and APA Issues

The bill is unclear as to the individuals or entities granted hearing rights to challenge inspector general findings. The bill merely provides that each state agency shall "ensure a meaningful opportunity, including the right to an impartial hearing, to challenge findings..." The legislation does not identify to whom this "meaningful opportunity" is granted. The bill also is unclear whether the "impartial hearing" is an administrative hearing under the APA. If so, the matter of who has a right to a hearing may need to be more clearly addressed in order to identify which parties have standing and a right to a hearing under ss. 120.569 or 120.57, F.S. If the report is not a final agency action, it is unclear what type of "impartial hearing" is required by this legislation, or what manner of uniform rules apply to such hearings (see also "Rulemaking concerns," below).

##### Public Records concerns

It is not clear, in the bill, to what extent the challenging party is entitled to review documents relating to the investigation that would otherwise be unavailable under the public records exemption for certain audit workpapers and reports.<sup>9</sup> The legislation may need to be amended to address the records access issue in order to clarify the challenger's right to review documents in light of the "impartial hearing" requirement of the bill.

##### Rulemaking concerns

The bill provides that the Chief Inspector General, part of the Executive Office of the Governor, shall create "specific procedures by which all inspectors general will implement" the hearing process

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

described in the bill. Such procedures may require development through the administrative rulemaking process described in s. 120.54, F.S., in order to be valid assertions of agency action.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.