

1 A bill to be entitled
 2 An act relating to agency inspectors general; amending s.
 3 20.055, F.S.; revising and providing definitions;
 4 providing duties of agency inspectors general relating to
 5 issues of deficiencies, abuses, or fraud by entities
 6 contracting with the state; requiring agency inspectors
 7 general to adopt certain principles and standards;
 8 requiring agencies under the Governor to notify the Chief
 9 Inspector General of inspector general appointments and
 10 terminations; prohibiting agency staff from preventing or
 11 prohibiting the inspector general from initiating,
 12 carrying out, or completing any audit or investigation;
 13 requiring audits to be conducted in accordance with the
 14 current International Standards for the Professional
 15 Practice of Internal Auditing; requiring the inspectors
 16 general to submit preliminary audit findings and
 17 recommendations to the entity; requiring the entity to
 18 respond within a specified time; requiring the response
 19 and any rebuttal to be included in the final report;
 20 requiring inspectors general to examine certain
 21 complaints; requiring inspectors general to employ only
 22 trained and experienced investigators; requiring the Chief
 23 Inspector General to adopt certain rules and procedures;
 24 providing exemptions from the review process for certain
 25 investigations; providing an effective date.

26
 27 Be It Enacted by the Legislature of the State of Florida:
 28

29 Section 1. Section 20.055, Florida Statutes, is amended to
30 read:

31 20.055 Agency inspectors general.--

32 (1) For the purposes of this section:

33 (a) "State agency" means each department created pursuant
34 to this chapter, and also includes the Executive Office of the
35 Governor, the Department of Military Affairs, the Fish and
36 Wildlife Conservation Commission, the Office of Insurance
37 Regulation of the Financial Services Commission, the Office of
38 Financial Regulation of the Financial Services Commission, the
39 Public Service Commission, and the state courts system.

40 (b) "Agency head" means a public official that includes
41 the Governor, a Cabinet officer, a secretary as defined in s.
42 20.03(5), or an executive director as defined in s. 20.03(6). It
43 also includes the chair of the Public Service Commission, the
44 Director of the Office of Insurance Regulation of the Financial
45 Services Commission, the Director of the Office of Financial
46 Regulation of the Financial Services Commission, and the Chief
47 Justice of the State Supreme Court. The term does not include
48 the head of, or an officer of, a private entity operating as a
49 for-profit or not-for-profit entity.

50 (c) "Entities contracting with the state" means for-profit
51 and not-for-profit organizations or businesses that have a legal
52 existence, such as corporations or partnerships, as opposed to
53 natural persons, that have entered into a relationship with a
54 state agency as defined in paragraph (a) to provide for
55 consideration certain goods or services to the state agency or
56 on behalf of the state agency. The relationship may be evidenced

57 by payment by warrant or purchasing card, contract, purchase
58 order, provider agreement, or other such mutually agreed upon
59 relationship.

60 (d) "Individuals substantially affected" means natural
61 persons who have established a real and sufficiently immediate
62 injury in fact due to the findings, conclusions, or
63 recommendations of a final report of a state agency inspector
64 general and who do not have or are not currently afforded an
65 existing right to an independent review process. Employees of
66 the state, including career service, probationary, other
67 personal service, Selected Exempt Service, and Senior Management
68 Service employees, are not covered by this definition. This
69 definition also does not cover former employees of the state
70 when the final report of the state agency inspector general
71 relates to matters arising during the former employee's term of
72 state employment.

73 (e) "Additional material relevant" means evidence
74 submitted to the state agency inspector general prior to release
75 of the final report that likely would have affected the
76 investigative findings. Such evidence is not merely cumulative
77 of evidence considered by the state agency inspector general
78 and, to be relevant, must tend to prove or disprove the matters
79 at issue in the investigation. Newly discovered evidence may be
80 considered if it was discovered subsequent to the agency
81 inspector general's final report and the agency inspector
82 general has affirmatively refused to reopen the investigation
83 despite such evidence. Such evidence shall not have been

84 withheld from the state agency inspector general during the
85 original investigation.

86 (f) "Original investigation" means an official
87 investigative review by a state agency inspector general of
88 information relative to suspected violations of any law, rule,
89 or agency policy resulting in written findings.

90 (2) The Office of Inspector General is hereby established
91 in each state agency to provide a central point for coordination
92 of and responsibility for activities that promote
93 accountability, integrity, and efficiency in government. It
94 shall be the duty and responsibility of each inspector general,
95 with respect to the state agency in which the office is
96 established, to:

97 (a) Advise in the development of performance measures,
98 standards, and procedures for the evaluation of state agency
99 programs.

100 (b) Assess the reliability and validity of the information
101 provided by the state agency on performance measures and
102 standards, and make recommendations for improvement, if
103 necessary, prior to submission of those measures and standards
104 to the Executive Office of the Governor pursuant to s.
105 216.0166(1).

106 (c) Review the actions taken by the state agency to
107 improve program performance and meet program standards and make
108 recommendations for improvement, if necessary.

109 (d) Provide direction for, supervise, and coordinate
110 audits, investigations, and management reviews relating to the
111 programs and operations of the state agency, except that when

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112 the inspector general does not possess the qualifications
113 specified in subsection (4), the director of auditing shall
114 conduct such audits.

115 (e) Conduct, supervise, or coordinate other activities
116 carried out or financed by that state agency for the purpose of
117 promoting economy and efficiency in the administration of, or
118 preventing and detecting fraud and abuse in, its programs and
119 operations.

120 (f) Keep such agency head informed concerning fraud,
121 abuses, and deficiencies relating to programs and operations
122 administered or financed by the state agency, recommend
123 corrective action concerning fraud, abuses, and deficiencies,
124 and report on the progress made in implementing corrective
125 action.

126 (g) Notify entities contracting with the state of reported
127 deficiencies, abuses, or fraud; recommend a corrective plan of
128 action; specify a timeframe for implementing the corrective
129 plan; and report on the progress made implementing the
130 corrective plan.

131 (h)~~(g)~~ Ensure effective coordination and cooperation
132 between the Auditor General, federal auditors, and other
133 governmental bodies with a view toward avoiding duplication.

134 (i)~~(h)~~ Review, as appropriate, rules relating to the
135 programs and operations of such state agency and make
136 recommendations concerning their impact.

137 (j)~~(i)~~ Ensure that an appropriate balance is maintained
138 between audit, investigative, and other accountability
139 activities.

140 (k) Adopt the current Association of Inspectors General
141 Principles and Standards for Offices of Inspector General for
142 meeting the duties and responsibilities pursuant to this
143 section.

144 (3) (a) The inspector general shall be appointed by the
145 agency head. For agencies under the direction of the Governor,
146 the appointment shall be made after notifying the Governor and
147 the Chief Inspector General in writing, at least 7 days prior to
148 an offer of employment, of the agency head's intention to hire
149 the inspector general.

150 (b) Each inspector general shall report to and be under
151 the general supervision of the agency head and shall not be
152 subject to supervision by any other employee of the state
153 agency. The inspector general shall be appointed without regard
154 to political affiliation.

155 (c) An inspector general may be removed from office by the
156 agency head. For agencies under the direction of the Governor,
157 the agency head shall notify the Governor and the Chief
158 Inspector General, in writing, of the intention to terminate the
159 inspector general at least 7 days prior to the removal. For
160 state agencies under the direction of the Governor and Cabinet,
161 the agency head shall notify the Governor and Cabinet in writing
162 of the intention to terminate the inspector general at least 7
163 days prior to the removal.

164 (d) The agency head or agency staff shall not prevent or
165 prohibit the inspector general ~~or director of auditing~~ from
166 initiating, carrying out, or completing any audit or
167 investigation.

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

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

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

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

188 (5) In carrying out the auditing duties and
189 responsibilities of this act, each inspector general shall
190 review and evaluate internal controls necessary to ensure the
191 fiscal accountability of the state agency. The inspector general
192 shall conduct financial, compliance, electronic data processing,
193 and performance audits of the agency and prepare audit reports
194 of his or her findings. The scope and assignment of the audits
195 shall be determined by the inspector general; however, the

196 agency head may at any time direct the inspector general to
 197 perform an audit of a special program, function, or
 198 organizational unit. The performance of the audit shall be under
 199 the direction of the inspector general, except that if the
 200 inspector general does not possess the qualifications specified
 201 in subsection (4), the director of auditing shall perform the
 202 functions listed in this subsection.

203 (a) Such audits shall be conducted in accordance with the
 204 current International Standards for the Professional Practice of
 205 Internal Auditing ~~as and subsequent Internal Auditing Standards~~
 206 ~~or Statements on Internal Auditing Standards~~ published by the
 207 Institute of Internal Auditors, Inc., or, where appropriate, in
 208 accordance with generally accepted governmental auditing
 209 standards. All audit reports issued by internal audit staff
 210 shall include a statement that the audit was conducted pursuant
 211 to the appropriate standards.

212 (b) Audit workpapers and reports shall be public records
 213 to the extent that they do not include information which has
 214 been made confidential and exempt from the provisions of s.
 215 119.07(1) pursuant to law. However, when the inspector general
 216 or a member of the staff receives from an individual a complaint
 217 or information that falls within the definition provided in s.
 218 112.3187(5), the name or identity of the individual shall not be
 219 disclosed to anyone else without the written consent of the
 220 individual, unless the inspector general determines that such
 221 disclosure is unavoidable during the course of the audit or
 222 investigation.

223 (c) The inspector general and the staff shall have access
224 to any records, data, and other information of the state agency
225 he or she deems necessary to carry out his or her duties. The
226 inspector general is also authorized to request such information
227 or assistance as may be necessary from the state agency or from
228 any federal, state, or local government entity.

229 (d) At the conclusion of each audit, the inspector general
230 shall submit preliminary findings and recommendations to the
231 person responsible for supervision of the program function or
232 operational unit who shall respond to any adverse findings
233 within 20 working days after receipt of the tentative findings.
234 Such response and the inspector general's rebuttal to the
235 response shall be included in the final audit report.

236 (e) At the conclusion of any audit of a program or
237 contract that involves an entity contracting with the state, the
238 inspector general shall submit preliminary findings and
239 recommendations to the entity. The entity must respond to any
240 adverse findings within 20 working days after receiving the
241 preliminary findings of the inspector general. The response, and
242 the inspector general's rebuttal, if any, must be included in
243 the final report.

244 (f)~~(e)~~ The inspector general shall submit the final report
245 to the agency head and to the Auditor General.

246 (g)~~(f)~~ The Auditor General, in connection with the
247 independent postaudit of the same agency pursuant to s. 11.45,
248 shall give appropriate consideration to internal audit reports
249 and the resolution of findings therein. The Legislative Auditing
250 Committee may inquire into the reasons or justifications for

251 failure of the agency head to correct the deficiencies reported
252 in internal audits that are also reported by the Auditor General
253 and shall take appropriate action.

254 (h)~~(g)~~ The inspector general shall monitor the
255 implementation of the state agency's response to any report on
256 the state agency issued by the Auditor General or by the Office
257 of Program Policy Analysis and Government Accountability. No
258 later than 6 months after the Auditor General or the Office of
259 Program Policy Analysis and Government Accountability publishes
260 a report on the state agency, the inspector general shall
261 provide a written response to the agency head on the status of
262 corrective actions taken. The Inspector General shall file a
263 copy of such response with the Legislative Auditing Committee.

264 (i)~~(h)~~ The inspector general shall develop long-term and
265 annual audit plans based on the findings of periodic risk
266 assessments. The plan, where appropriate, should include
267 postaudit samplings of payments and accounts. The plan shall
268 show the individual audits to be conducted during each year and
269 related resources to be devoted to the respective audits. The
270 Chief Financial Officer, to assist in fulfilling the
271 responsibilities for examining, auditing, and settling accounts,
272 claims, and demands pursuant to s. 17.03(1), and examining,
273 auditing, adjusting, and settling accounts pursuant to s. 17.04,
274 may utilize audits performed by the inspectors general and
275 internal auditors. For state agencies under the Governor, the
276 audit plans shall be submitted to the Governor's Chief Inspector
277 General. The plan shall be submitted to the agency head for

278 approval. A copy of the approved plan shall be submitted to the
 279 Auditor General.

280 (6) In carrying out the investigative duties and
 281 responsibilities specified in this section, each inspector
 282 general shall initiate, conduct, supervise, and coordinate
 283 investigations designed to detect, deter, prevent, and eradicate
 284 fraud, waste, mismanagement, misconduct, and other abuses in
 285 state government. For these purposes, each inspector general
 286 ~~state agency~~ shall:

287 (a) Receive complaints and coordinate all activities of
 288 the agency as required by the Whistle-blower's Act pursuant to
 289 ss. 112.3187-112.31895.

290 (b) Receive and examine ~~consider~~ the complaints that ~~which~~
 291 do not meet the criteria for an investigation under the Whistle-
 292 blower's Act, or are reported by an entity contracting with the
 293 state, and conduct, supervise, or coordinate such inquiries,
 294 investigations, or reviews ~~as the inspector general deems~~
 295 ~~appropriate~~.

296 (c) Report expeditiously to the Department of Law
 297 Enforcement or other law enforcement agencies, as appropriate,
 298 whenever the inspector general has reasonable grounds to believe
 299 there has been a violation of criminal law.

300 (d) Conduct investigations and other inquiries free of
 301 actual or perceived impairment to the independence of the
 302 inspector general or the inspector general's office. This shall
 303 include freedom from any interference with investigations and
 304 timely access to records and other sources of information.

305 (e) Employ only trained and experienced investigators.

306 (f)~~(e)~~ Submit in a timely fashion final reports on
307 investigations conducted by the inspector general to the agency
308 head, except for whistle-blower's investigations, which shall be
309 conducted and reported pursuant to s. 112.3189.

310 (7) Each inspector general shall, not later than September
311 30 of each year, prepare an annual report summarizing the
312 activities of the office during the immediately preceding state
313 fiscal year. The final report shall be furnished to the agency
314 head. Such report shall include, but need not be limited to:

315 (a) A description of activities relating to the
316 development, assessment, and validation of performance measures.

317 (b) A description of significant abuses and deficiencies
318 relating to the administration of programs and operations of the
319 agency disclosed by investigations, audits, reviews, or other
320 activities during the reporting period.

321 (c) A description of the recommendations for corrective
322 action made by the inspector general during the reporting period
323 with respect to significant problems, abuses, or deficiencies
324 identified.

325 (d) The identification of each significant recommendation
326 described in previous annual reports on which corrective action
327 has not been completed.

328 (e) A summary of each audit and investigation completed
329 during the reporting period.

330 (8) The Chief Inspector General in the Executive Office of
331 the Governor, as defined in s. 14.32, shall:

332 (a) Adopt rules to specify the conditions and procedures
333 for reviewing a final investigative report by the inspector

334 general of an agency under the jurisdiction of the Governor. The
335 conditions and procedures must include provisions related to:

336 1. Offering entities contracting with state agencies and
337 individuals substantially affected by the findings, conclusions,
338 and recommendations a meaningful opportunity to challenge in
339 writing the findings, conclusions, and recommendations contained
340 in an agency inspector general's final investigative report or
341 to seek review by the Chief Inspector General under the process
342 described in this subsection.

343 2. Identifying the entities and individuals allowed to
344 submit a written response.

345 3. Identifying the circumstances under which the entity's
346 or individual's response must be attached to the agency
347 inspector general's final report.

348 4. Providing a review process that allows entities and
349 individuals substantially affected by the findings, conclusions,
350 and recommendations of an agency inspector general final
351 investigative report to present to the Chief Inspector General,
352 or a designee, any additional material relevant to the final
353 investigative report. The review process must provide that if an
354 administrative law judge of the Division of Administrative
355 Hearings within the Department of Management Services determines
356 that the material or evidence submitted by the individual
357 substantially affected proves that the individual or entity
358 contracting with the state has been wrongly accused by a state
359 agency in a criminal investigation, the administrative law judge
360 shall order the state agency to pay the outstanding balance owed
361 and the expenses incurred to defend against the wrongful

362 accusation. The administrative law judge determination required
 363 under this subparagraph shall be pursuant to a hearing conducted
 364 by the Division of Administrative Hearings within the Department
 365 of Management Services, and any such order shall constitute a
 366 final order.

367 5. Allowing the Chief Inspector General to independently
 368 investigate the agency inspector general's final report and the
 369 original investigation.

370 6. Adopting special conditions for whistle-blower
 371 investigations in accordance with ss. 112.3187-112.31895.

372 7. Providing exemptions from the review process for the
 373 following categories of investigations:

374 a. Matters under active criminal investigation.

375 b. Matters that are under review by a grand jury.

376 c. Instances where an individual substantially affected or
 377 an adverse party has filed a civil suit against the state, the
 378 state agency, or the agency head for matters that were the
 379 subject of the initial agency inspector general report or
 380 matters reasonably connected with the initial agency inspector
 381 general investigation.

382 8. Providing definitions of terms related to the review
 383 process.

384 (b) Ensure that policies and procedures adopted pursuant
 385 to this subsection are consistent with the recommendations
 386 contained in the report of the Council on State Agency
 387 Inspectors General dated December 19, 2006.

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389 Nothing provided in this subsection shall be construed to limit
390 the jurisdiction of an agency inspector general defined in this
391 section or the Chief Inspector General as defined in s. 14.32.

392 (9)~~(8)~~ Each agency inspector general shall, to the extent
393 both necessary and practicable, include on his or her staff
394 individuals with electronic data processing auditing experience.

395 Section 2. This act shall take effect July 1, 2007.