

By the Committee on Governmental Operations; and Senator Bennett

585-2684-07

1   A bill to be entitled

2           An act relating to agency inspectors general;

3           amending s. 20.055, F.S.; providing

4           definitions; requiring agency inspectors

5           general to comply with certain principles and

6           standards; requiring an inspector general to

7           submit findings of an audit to specified

8           persons or entities; requiring agencies under

9           the Governor to notify the Chief Inspector

10          General of inspector general appointments and

11          terminations; prohibiting agency staff from

12          preventing or prohibiting the inspector general

13          or director of auditing from initiating,

14          carrying out, or completing any audit or

15          investigation; requiring audits to be conducted

16          in accordance with the current International

17          Standards for the Professional Practice of

18          Internal Auditing; requiring the inspector

19          general of each state agency to report certain

20          written complaints to the Chief Inspector

21          General; requiring the Chief Inspector General

22          to fulfill certain duties and responsibilities;

23          requiring a state agency to reimburse legal

24          fees and costs that are incurred by certain

25          individuals and entities under certain

26          conditions; providing an effective date.

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

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30                   Section 1.   Section 20.055, Florida Statutes, is

31   amended to read:

1           20.055 Agency inspectors general.--

2           (1) For the purposes of this section:

3           (a) "State agency" means each department created  
4 pursuant to this chapter, and also includes the Executive  
5 Office of the Governor, the Department of Military Affairs,  
6 the Fish and Wildlife Conservation Commission, the Office of  
7 Insurance Regulation of the Financial Services Commission, the  
8 Office of Financial Regulation of the Financial Services  
9 Commission, the Public Service Commission, and the state  
10 courts system.

11           (b) "Agency head" means a public official such as the  
12 Governor, a Cabinet officer, a secretary as defined in s.  
13 20.03(5), or an executive director as defined in s. 20.03(6).  
14 It also includes the chair of the Public Service Commission,  
15 the Director of the Office of Insurance Regulation of the  
16 Financial Services Commission, the Director of the Office of  
17 Financial Regulation of the Financial Services Commission, and  
18 the Chief Justice of the State Supreme Court. The term does  
19 not include the head of, or an officer of, a private entity  
20 operating as a for-profit or not-for-profit entity.

21           (c) "Individuals substantially affected" means natural  
22 persons who have established a real and sufficiently immediate  
23 injury in fact due to the findings, conclusions, or  
24 recommendations of a final report of a state agency inspector  
25 general, who are the subject of the audit or investigation,  
26 and who do not have or are not currently afforded an existing  
27 right to an independent review process. Employees of the  
28 state, including career service, probationary, other personal  
29 service, Selected Exempt Service, and Senior Management  
30 Service employees, are not covered by this definition. This  
31 definition also does not cover former employees of the state

1 if the final report of the state agency inspector general  
2 relates to matters arising during a former employee's term of  
3 state employment.

4 (d) "Entities contracting with the state" means  
5 for-profit and not-for-profit organizations or businesses  
6 having a legal existence, such as corporations or  
7 partnerships, as opposed to natural persons, that have entered  
8 into a relationship with a state agency as defined in  
9 paragraph (a) to provide for consideration certain goods or  
10 services to the state agency or on behalf of the state agency.  
11 The relationship may be evidenced by payment by warrant or  
12 purchasing card, contract, purchase order, provider agreement,  
13 or other such mutually agreed upon relationship.

14 (e) "Additional material relevant" means evidence  
15 submitted to the state agency inspector general prior to  
16 release of the final report that likely would have affected  
17 the investigative findings. Such evidence is not merely  
18 cumulative of evidence considered by the state agency  
19 inspector general and, to be relevant, must tend to prove or  
20 disprove the matters at issue in the investigation. Newly  
21 discovered evidence may be considered if it was discovered  
22 subsequent to the agency inspector general's final report and  
23 the agency inspector general has affirmatively refused to  
24 reopen the investigation despite such evidence. Such evidence  
25 shall not have been withheld from the state agency inspector  
26 general during the original investigation.

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

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1           (2) The Office of Inspector General is hereby  
2 established in each state agency to provide a central point  
3 for coordination of and responsibility for activities that  
4 promote accountability, integrity, and efficiency in  
5 government. It shall be the duty and responsibility of each  
6 inspector general, with respect to the state agency in which  
7 the office is established, to:

8           (a) Advise in the development of performance measures,  
9 standards, and procedures for the evaluation of state agency  
10 programs.

11           (b) Assess the reliability and validity of the  
12 information provided by the state agency on performance  
13 measures and standards, and make recommendations for  
14 improvement, if necessary, prior to submission of those  
15 measures and standards to the Executive Office of the Governor  
16 pursuant to s. 216.0166(1).

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

20           (d) Provide direction for, supervise, and coordinate  
21 audits, investigations, and management reviews relating to the  
22 programs and operations of the state agency, except that when  
23 the inspector general does not possess the qualifications  
24 specified in subsection (4), the director of auditing shall  
25 conduct such audits.

26           (e) Conduct, supervise, or coordinate other activities  
27 carried out or financed by that state agency for the purpose  
28 of promoting economy and efficiency in the administration of,  
29 or preventing and detecting fraud and abuse in, its programs  
30 and operations.

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1 (f) Keep such agency head informed concerning fraud,  
2 abuses, and deficiencies relating to programs and operations  
3 administered or financed by the state agency, recommend  
4 corrective action concerning fraud, abuses, and deficiencies,  
5 and report on the progress made in implementing corrective  
6 action.

7 (g) Ensure effective coordination and cooperation  
8 between the Auditor General, federal auditors, and other  
9 governmental bodies with a view toward avoiding duplication.

10 (h) Review, as appropriate, rules relating to the  
11 programs and operations of such state agency and make  
12 recommendations concerning their impact.

13 (i) Ensure that an appropriate balance is maintained  
14 between audit, investigative, and other accountability  
15 activities.

16 (j) Comply with the General Principles and Standards  
17 for Offices of Inspector General as published and revised by  
18 the Association of Inspectors General.

19 (3)(a) The inspector general shall be appointed by the  
20 agency head. For agencies under the direction of the Governor,  
21 the appointment shall be made after notifying the Governor and  
22 the Chief Inspector General in writing, at least 7 days prior  
23 to an offer of employment, of the agency head's intention to  
24 hire the inspector general.

25 (b) Each inspector general shall report to and be  
26 under the general supervision of the agency head and shall not  
27 be subject to supervision by any other employee of the state  
28 agency. The inspector general shall be appointed without  
29 regard to political affiliation.

30 (c) An inspector general may be removed from office by  
31 the agency head. For agencies under the direction of the

1 Governor, the agency head shall notify the Governor and the  
2 Chief Inspector General, in writing, of the intention to  
3 terminate the inspector general at least 7 days prior to the  
4 removal. For state agencies under the direction of the  
5 Governor and Cabinet, the agency head shall notify the  
6 Governor and Cabinet in writing of the intention to terminate  
7 the inspector general at least 7 days prior to the removal.

8 (d) The agency head or agency staff shall not prevent  
9 or prohibit the inspector general ~~or director of auditing~~ from  
10 initiating, carrying out, or completing any audit or  
11 investigation.

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

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

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

29 (c) A certified public accountant license issued  
30 pursuant to chapter 473 or a certified internal audit  
31 certificate issued by the Institute of Internal Auditors or

1 earned by examination, and 4 years of experience as required  
2 in paragraph (a).

3 (5) In carrying out the auditing duties and  
4 responsibilities of this act, each inspector general shall  
5 review and evaluate internal controls necessary to ensure the  
6 fiscal accountability of the state agency. The inspector  
7 general shall conduct financial, compliance, electronic data  
8 processing, and performance audits of the agency and prepare  
9 audit reports of his or her findings. The scope and assignment  
10 of the audits shall be determined by the inspector general;  
11 however, the agency head may at any time direct the inspector  
12 general to perform an audit of a special program, function, or  
13 organizational unit. The performance of the audit shall be  
14 under the direction of the inspector general, except that if  
15 the inspector general does not possess the qualifications  
16 specified in subsection (4), the director of auditing shall  
17 perform the functions listed in this subsection.

18 (a) Such audits shall be conducted in accordance with  
19 the current International Standards for the Professional  
20 Practice of Internal Auditing ~~as and subsequent Internal~~  
21 ~~Auditing Standards or Statements on Internal Auditing~~  
22 ~~Standards~~ published by the Institute of Internal Auditors,  
23 Inc., or, where appropriate, in accordance with generally  
24 accepted governmental auditing standards. All audit reports  
25 issued by internal audit staff shall include a statement that  
26 the audit was conducted pursuant to the appropriate standards.

27 (b) Audit workpapers and reports shall be public  
28 records to the extent that they do not include information  
29 which has been made confidential and exempt from the  
30 provisions of s. 119.07(1) pursuant to law. However, when the  
31 inspector general or a member of the staff receives from an

1 individual a complaint or information that falls within the  
2 definition provided in s. 112.3187(5), the name or identity of  
3 the individual shall not be disclosed to anyone else without  
4 the written consent of the individual, unless the inspector  
5 general determines that such disclosure is unavoidable during  
6 the course of the audit or investigation.

7 (c) The inspector general and the staff shall have  
8 access to any records, data, and other information of the  
9 state agency he or she deems necessary to carry out his or her  
10 duties. The inspector general is also authorized to request  
11 such information or assistance as may be necessary from the  
12 state agency or from any federal, state, or local government  
13 entity.

14 (d) At the conclusion of each audit, the inspector  
15 general shall submit preliminary findings and recommendations  
16 to the person responsible for supervision of the program  
17 function or operational unit who shall respond to any adverse  
18 findings within 20 working days after receipt of the tentative  
19 findings. Such response and the inspector general's rebuttal  
20 to the response shall be included in the final audit report.

21 (e) At the conclusion of an audit in which the results  
22 of the audit are published and disbursed and the subject of  
23 the audit is a specific, singular entity contracting with the  
24 state, the inspector general shall submit findings to the  
25 subject who shall respond to any adverse findings within 20  
26 working days. Such response and the inspector general's  
27 rebuttal to the response, if any, shall be included in the  
28 final audit report.

29 ~~(f)(e)~~ The inspector general shall submit the final  
30 report to the agency head and to the Auditor General.  
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1           ~~(g)~~(f) The Auditor General, in connection with the  
2 independent postaudit of the same agency pursuant to s. 11.45,  
3 shall give appropriate consideration to internal audit reports  
4 and the resolution of findings therein. The Legislative  
5 Auditing Committee may inquire into the reasons or  
6 justifications for failure of the agency head to correct the  
7 deficiencies reported in internal audits that are also  
8 reported by the Auditor General and shall take appropriate  
9 action.

10           ~~(h)~~(g) The inspector general shall monitor the  
11 implementation of the state agency's response to any report on  
12 the state agency issued by the Auditor General or by the  
13 Office of Program Policy Analysis and Government  
14 Accountability. No later than 6 months after the Auditor  
15 General or the Office of Program Policy Analysis and  
16 Government Accountability publishes a report on the state  
17 agency, the inspector general shall provide a written response  
18 to the agency head on the status of corrective actions taken.  
19 The Inspector General shall file a copy of such response with  
20 the Legislative Auditing Committee.

21           ~~(i)~~(h) The inspector general shall develop long-term  
22 and annual audit plans based on the findings of periodic risk  
23 assessments. The plan, where appropriate, should include  
24 postaudit samplings of payments and accounts. The plan shall  
25 show the individual audits to be conducted during each year  
26 and related resources to be devoted to the respective audits.  
27 The Chief Financial Officer, to assist in fulfilling the  
28 responsibilities for examining, auditing, and settling  
29 accounts, claims, and demands pursuant to s. 17.03(1), and  
30 examining, auditing, adjusting, and settling accounts pursuant  
31 to s. 17.04, may utilize audits performed by the inspectors

1 general and internal auditors. For state agencies under the  
2 Governor, the audit plans shall be submitted to the Governor's  
3 Chief Inspector General. The plan shall be submitted to the  
4 agency head for approval. A copy of the approved plan shall be  
5 submitted to the Auditor General.

6 (6) In carrying out the investigative duties and  
7 responsibilities specified in this section, each inspector  
8 general shall initiate, conduct, supervise, and coordinate  
9 investigations designed to detect, deter, prevent, and  
10 eradicate fraud, waste, mismanagement, misconduct, and other  
11 abuses in state government. For these purposes, each inspector  
12 general ~~state agency~~ shall:

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

16 (b) Receive and consider the complaints which do not  
17 meet the criteria for an investigation under the  
18 Whistle-blower's Act and conduct, supervise, or coordinate  
19 such inquiries, investigations, or reviews as the inspector  
20 general deems appropriate.

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

25 (d) Conduct investigations and other inquiries free of  
26 actual or perceived impairment to the independence of the  
27 inspector general or the inspector general's office. This  
28 shall include freedom from any interference with  
29 investigations and timely access to records and other sources  
30 of information.

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1       (e) At the conclusion of each investigation in which  
2 the subject of the investigation is a specific entity  
3 contracting with the state or an individual substantially  
4 affected by the findings, conclusions, and recommendations,  
5 the inspector general shall, consistent with chapter 119,  
6 submit findings to the subject who shall respond to any  
7 adverse findings within 10 days. Such response and the  
8 inspector general's rebuttal to the response, if any, shall be  
9 included in the final investigative report.

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

14       (7) Each inspector general shall, not later than  
15 September 30 of each year, prepare an annual report  
16 summarizing the activities of the office during the  
17 immediately preceding state fiscal year. The final report  
18 shall be furnished to the agency head. Such report shall  
19 include, but need not be limited to:

20       (a) A description of activities relating to the  
21 development, assessment, and validation of performance  
22 measures.

23       (b) A description of significant abuses and  
24 deficiencies relating to the administration of programs and  
25 operations of the agency disclosed by investigations, audits,  
26 reviews, or other activities during the reporting period.

27       (c) A description of the recommendations for  
28 corrective action made by the inspector general during the  
29 reporting period with respect to significant problems, abuses,  
30 or deficiencies identified.

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1           (d) The identification of each significant  
2 recommendation described in previous annual reports on which  
3 corrective action has not been completed.

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

6           (8) The inspector general in each agency under the  
7 Governor's jurisdiction shall timely report to the Chief  
8 Inspector General all written complaints received concerning  
9 the duties and responsibilities outlined in this section or  
10 any misconduct alleged related to the office of the inspector  
11 general or its employees.

12           (9) For agencies under the Governor's jurisdiction,  
13 the Chief Inspector General in the Executive Office of the  
14 Governor, as defined in s. 14.32, shall:

15           (a) Receive and consider all complaints against  
16 offices of inspectors general or their employees and conduct,  
17 supervise, or coordinate such inquiries, investigations, or  
18 reviews as the Chief Inspector General considers appropriate.

19           (b) Develop policies and procedures for reviewing  
20 complaints against a state agency office of inspector general  
21 or its employees, including, but not limited to, complaints  
22 regarding misconduct, failure to properly follow professional  
23 standards, or any other violation of agency policy, rule, or  
24 law which is consistent with the definitions in this section  
25 and s. 14.32. The policies and procedures must identify  
26 exemptions from this process, including, but not limited to,  
27 whistle-blower investigations conducted in accordance with ss.  
28 112.3187-112.31895. These policies and procedures must afford  
29 entities contracting with state agencies, and individuals  
30 substantially affected by the findings, conclusions, and  
31 recommendations, a meaningful opportunity to express their

1 complaint and present additional material relevant to the  
2 original investigation. Policies and procedures specified  
3 herein are not subject to rulemaking under chapter 120.

4 (c) Distribute the report of any investigation  
5 conducted or supervised by the Chief Inspector General to the  
6 office of the inspector general of the state agency, the  
7 agency head of the subject's employing agency, and the person  
8 that filed the complaint against the office of inspector  
9 general of the state agency or its employees.

10 (10) If a state agency inspector general's reported  
11 adverse findings regarding entities contracting with state  
12 agencies and individuals substantially affected by the  
13 findings, conclusions, and recommendations are determined to  
14 be not substantially justified by the Chief Inspector General,  
15 the agency shall reimburse reasonable legal fees and costs not  
16 to exceed \$50,000 specifically associated with filing and  
17 pursuing the complaints, which are incurred by the entities  
18 contracting with state agencies and individuals substantially  
19 affected by the findings, conclusions, and recommendations.

20 (11)(8) Each agency inspector general shall, to the  
21 extent both necessary and practicable, include on his or her  
22 staff individuals with electronic data processing auditing  
23 experience.

24 Section 2. This act shall take effect July 1, 2007.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 2078

The Committee Substitute provides altered provisions for the receipt of adverse audit findings by investigated parties and permits response and rebuttal. It also provides that an investigated party may recover up to \$50,000 in reasonable legal fees and costs when the findings, conclusions, and recommendations of an investigation cannot be reasonably substantiated.