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 CS/HB 165, Engrossed 2

2008 Legislature

1 A bill to be entitled
 2 An act relating to agency inspectors general; amending s.
 3 20.055, F.S.; providing definitions; requiring agency
 4 inspectors general to comply with certain principles and
 5 standards; requiring an inspector general to submit
 6 findings of audits and investigations to specified persons
 7 or entities if such findings are not exempt from
 8 disclosure; requiring responses to findings within 20
 9 working days; requiring agencies under the Governor to
 10 notify the Chief Inspector General of inspector general
 11 appointments and terminations; prohibiting agency staff
 12 from preventing or prohibiting the inspector general from
 13 initiating, carrying out, or completing any audit or
 14 investigation; requiring audits to be conducted in
 15 accordance with the current International Standards for
 16 the Professional Practice of Internal Auditing; requiring
 17 the inspector general of each state agency to report
 18 certain written complaints to the agency head, and for
 19 agencies under the Governor, to the agency head and the
 20 Chief Inspector General; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 20.055, Florida Statutes, is amended to
 25 read:

26 20.055 Agency inspectors general.--

27 (1) For the purposes of this section:

28 (a) "State agency" means each department created pursuant

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29 | to this chapter, and also includes the Executive Office of the
 30 | Governor, the Department of Military Affairs, the Fish and
 31 | Wildlife Conservation Commission, the Office of Insurance
 32 | Regulation of the Financial Services Commission, the Office of
 33 | Financial Regulation of the Financial Services Commission, the
 34 | Public Service Commission, the Board of Governors of the State
 35 | University System, and the state courts system.

36 | (b) "Agency head" means the Governor, a Cabinet officer, a
 37 | secretary as defined in s. 20.03(5), or an executive director as
 38 | defined in s. 20.03(6). It also includes the chair of the Public
 39 | Service Commission, the Director of the Office of Insurance
 40 | Regulation of the Financial Services Commission, the Director of
 41 | the Office of Financial Regulation of the Financial Services
 42 | Commission, and the Chief Justice of the State Supreme Court.

43 | (c) "Individuals substantially affected" means natural
 44 | persons who have established a real and sufficiently immediate
 45 | injury in fact due to the findings, conclusions, or
 46 | recommendations of a final report of a state agency inspector
 47 | general, who are the subject of the audit or investigation, and
 48 | who do not have or are not currently afforded an existing right
 49 | to an independent review process. Employees of the state,
 50 | including career service, probationary, other personal service,
 51 | Selected Exempt Service, and Senior Management Service
 52 | employees, are not covered by this definition. This definition
 53 | also does not cover former employees of the state if the final
 54 | report of the state agency inspector general relates to matters
 55 | arising during a former employee's term of state employment.
 56 | This definition does not apply to persons who are the subject of

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57 audits or investigations conducted pursuant to ss. 112.3187-
58 112.31895 or s. 409.913 or which are otherwise confidential and
59 exempt under s. 119.07.

60 (d) "Entities contracting with the state" means for-profit
61 and not-for-profit organizations or businesses having a legal
62 existence, such as corporations or partnerships, as opposed to
63 natural persons, which have entered into a relationship with a
64 state agency as defined in paragraph (a) to provide for
65 consideration certain goods or services to the state agency or
66 on behalf of the state agency. The relationship may be evidenced
67 by payment by warrant or purchasing card, contract, purchase
68 order, provider agreement, or other such mutually agreed upon
69 relationship. This definition does not apply to entities which
70 are the subject of audits or investigations conducted pursuant
71 to ss. 112.3187-112.31895 or s. 409.913 or which are otherwise
72 confidential and exempt under s. 119.07.

73 (2) The Office of Inspector General is hereby established
74 in each state agency to provide a central point for coordination
75 of and responsibility for activities that promote
76 accountability, integrity, and efficiency in government. It
77 shall be the duty and responsibility of each inspector general,
78 with respect to the state agency in which the office is
79 established, to:

80 (a) Advise in the development of performance measures,
81 standards, and procedures for the evaluation of state agency
82 programs.

83 (b) Assess the reliability and validity of the information
84 provided by the state agency on performance measures and

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85 standards, and make recommendations for improvement, if
86 necessary, prior to submission of those measures and standards
87 to the Executive Office of the Governor pursuant to s.
88 216.0166(1).

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

92 (d) Provide direction for, supervise, and coordinate
93 audits, investigations, and management reviews relating to the
94 programs and operations of the state agency, except that when
95 the inspector general does not possess the qualifications
96 specified in subsection (4), the director of auditing shall
97 conduct such audits.

98 (e) Conduct, supervise, or coordinate other activities
99 carried out or financed by that state agency for the purpose of
100 promoting economy and efficiency in the administration of, or
101 preventing and detecting fraud and abuse in, its programs and
102 operations.

103 (f) Keep such agency head informed concerning fraud,
104 abuses, and deficiencies relating to programs and operations
105 administered or financed by the state agency, recommend
106 corrective action concerning fraud, abuses, and deficiencies,
107 and report on the progress made in implementing corrective
108 action.

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

112 (h) Review, as appropriate, rules relating to the programs

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113 and operations of such state agency and make recommendations
114 concerning their impact.

115 (i) Ensure that an appropriate balance is maintained
116 between audit, investigative, and other accountability
117 activities.

118 (j) Comply with the General Principles and Standards for
119 Offices of Inspector General as published and revised by the
120 Association of Inspectors General.

121 (3) (a) The inspector general shall be appointed by the
122 agency head. For agencies under the direction of the Governor,
123 the appointment shall be made after notifying the Governor and
124 the Chief Inspector General in writing, at least 7 days prior to
125 an offer of employment, of the agency head's intention to hire
126 the inspector general.

127 (b) Each inspector general shall report to and be under
128 the general supervision of the agency head and shall not be
129 subject to supervision by any other employee of the state
130 agency. The inspector general shall be appointed without regard
131 to political affiliation.

132 (c) An inspector general may be removed from office by the
133 agency head. For agencies under the direction of the Governor,
134 the agency head shall notify the Governor and the Chief
135 Inspector General, in writing, of the intention to terminate the
136 inspector general at least 7 days prior to the removal. For
137 state agencies under the direction of the Governor and Cabinet,
138 the agency head shall notify the Governor and Cabinet in writing
139 of the intention to terminate the inspector general at least 7
140 days prior to the removal.

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141 (d) The agency head or agency staff shall not prevent or
 142 prohibit the inspector general ~~or director of auditing~~ from
 143 initiating, carrying out, or completing any audit or
 144 investigation.

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

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

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

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

165 (5) In carrying out the auditing duties and
 166 responsibilities of this act, each inspector general shall
 167 review and evaluate internal controls necessary to ensure the
 168 fiscal accountability of the state agency. The inspector general

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169 shall conduct financial, compliance, electronic data processing,
 170 and performance audits of the agency and prepare audit reports
 171 of his or her findings. The scope and assignment of the audits
 172 shall be determined by the inspector general; however, the
 173 agency head may at any time direct the inspector general to
 174 perform an audit of a special program, function, or
 175 organizational unit. The performance of the audit shall be under
 176 the direction of the inspector general, except that if the
 177 inspector general does not possess the qualifications specified
 178 in subsection (4), the director of auditing shall perform the
 179 functions listed in this subsection.

180 (a) Such audits shall be conducted in accordance with the
 181 current International Standards for the Professional Practice of
 182 Internal Auditing ~~as and subsequent Internal Auditing Standards~~
 183 ~~or Statements on Internal Auditing Standards~~ published by the
 184 Institute of Internal Auditors, Inc., or, where appropriate, in
 185 accordance with generally accepted governmental auditing
 186 standards. All audit reports issued by internal audit staff
 187 shall include a statement that the audit was conducted pursuant
 188 to the appropriate standards.

189 (b) Audit workpapers and reports shall be public records
 190 to the extent that they do not include information which has
 191 been made confidential and exempt from the provisions of s.
 192 119.07(1) pursuant to law. However, when the inspector general
 193 or a member of the staff receives from an individual a complaint
 194 or information that falls within the definition provided in s.
 195 112.3187(5), the name or identity of the individual shall not be
 196 disclosed to anyone else without the written consent of the

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197 individual, unless the inspector general determines that such
198 disclosure is unavoidable during the course of the audit or
199 investigation.

200 (c) The inspector general and the staff shall have access
201 to any records, data, and other information of the state agency
202 he or she deems necessary to carry out his or her duties. The
203 inspector general is also authorized to request such information
204 or assistance as may be necessary from the state agency or from
205 any federal, state, or local government entity.

206 (d) At the conclusion of each audit, the inspector general
207 shall submit preliminary findings and recommendations to the
208 person responsible for supervision of the program function or
209 operational unit who shall respond to any adverse findings
210 within 20 working days after receipt of the preliminary
211 ~~tentative~~ findings. Such response and the inspector general's
212 rebuttal to the response shall be included in the final audit
213 report.

214 (e) At the conclusion of an audit in which the subject of
215 the audit is a specific entity contracting with the state or an
216 individual substantially affected, if the audit is not
217 confidential or otherwise exempt from disclosure by law, the
218 inspector general shall, consistent with s. 119.07(1), submit
219 the findings to the entity contracting with the state or the
220 individual substantially affected, who shall be advised in
221 writing that they may submit a written response within 20
222 working days after receipt of the findings. The response and the
223 inspector general's rebuttal to the response, if any, must be
224 included in the final audit report.

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

227 (g)~~(f)~~ The Auditor General, in connection with the
 228 independent postaudit of the same agency pursuant to s. 11.45,
 229 shall give appropriate consideration to internal audit reports
 230 and the resolution of findings therein. The Legislative Auditing
 231 Committee may inquire into the reasons or justifications for
 232 failure of the agency head to correct the deficiencies reported
 233 in internal audits that are also reported by the Auditor General
 234 and shall take appropriate action.

235 (h)~~(g)~~ The inspector general shall monitor the
 236 implementation of the state agency's response to any report on
 237 the state agency issued by the Auditor General or by the Office
 238 of Program Policy Analysis and Government Accountability. No
 239 later than 6 months after the Auditor General or the Office of
 240 Program Policy Analysis and Government Accountability publishes
 241 a report on the state agency, the inspector general shall
 242 provide a written response to the agency head on the status of
 243 corrective actions taken. The Inspector General shall file a
 244 copy of such response with the Legislative Auditing Committee.

245 (i)~~(h)~~ The inspector general shall develop long-term and
 246 annual audit plans based on the findings of periodic risk
 247 assessments. The plan, where appropriate, should include
 248 postaudit samplings of payments and accounts. The plan shall
 249 show the individual audits to be conducted during each year and
 250 related resources to be devoted to the respective audits. The
 251 Chief Financial Officer, to assist in fulfilling the
 252 responsibilities for examining, auditing, and settling accounts,

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253 claims, and demands pursuant to s. 17.03(1), and examining,
 254 auditing, adjusting, and settling accounts pursuant to s. 17.04,
 255 may utilize audits performed by the inspectors general and
 256 internal auditors. For state agencies under the Governor, the
 257 audit plans shall be submitted to the Governor's Chief Inspector
 258 General. The plan shall be submitted to the agency head for
 259 approval. A copy of the approved plan shall be submitted to the
 260 Auditor General.

261 (6) In carrying out the investigative duties and
 262 responsibilities specified in this section, each inspector
 263 general shall initiate, conduct, supervise, and coordinate
 264 investigations designed to detect, deter, prevent, and eradicate
 265 fraud, waste, mismanagement, misconduct, and other abuses in
 266 state government. For these purposes, each inspector general
 267 ~~state agency~~ shall:

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

271 (b) Receive and consider the complaints which do not meet
 272 the criteria for an investigation under the Whistle-blower's Act
 273 and conduct, supervise, or coordinate such inquiries,
 274 investigations, or reviews as the inspector general deems
 275 appropriate.

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

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280 (d) Conduct investigations and other inquiries free of
 281 actual or perceived impairment to the independence of the
 282 inspector general or the inspector general's office. This shall
 283 include freedom from any interference with investigations and
 284 timely access to records and other sources of information.

285 (e) At the conclusion of each investigation in which the
 286 subject of the investigation is a specific entity contracting
 287 with the state or an individual substantially affected as
 288 defined by this section, and if the investigation is not
 289 confidential or otherwise exempt from disclosure by law, the
 290 inspector general shall, consistent with s. 119.07(1), submit
 291 findings to the subject that is a specific entity contracting
 292 with the state or an individual substantially affected, who
 293 shall be advised in writing that they may submit a written
 294 response within 20 working days after receipt of the findings.
 295 Such response and the inspector general's rebuttal to the
 296 response, if any, shall be included in the final investigative
 297 report.

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

302 (7) Each inspector general shall, not later than September
 303 30 of each year, prepare an annual report summarizing the
 304 activities of the office during the immediately preceding state
 305 fiscal year. The final report shall be furnished to the agency
 306 head. Such report shall include, but need not be limited to:

307 (a) A description of activities relating to the

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308 development, assessment, and validation of performance measures.

309 (b) A description of significant abuses and deficiencies
 310 relating to the administration of programs and operations of the
 311 agency disclosed by investigations, audits, reviews, or other
 312 activities during the reporting period.

313 (c) A description of the recommendations for corrective
 314 action made by the inspector general during the reporting period
 315 with respect to significant problems, abuses, or deficiencies
 316 identified.

317 (d) The identification of each significant recommendation
 318 described in previous annual reports on which corrective action
 319 has not been completed.

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

322 (8) The inspector general in each agency shall provide to
 323 the agency head, upon receipt, all written complaints concerning
 324 the duties and responsibilities in this section or any
 325 allegation of misconduct related to the office of the inspector
 326 general or its employees, if received from subjects of audits or
 327 investigations who are individuals substantially affected or
 328 entities contracting with the state, as defined in this section.
 329 For agencies solely under the direction of the Governor, the
 330 inspector general shall also provide the complaint to the Chief
 331 Inspector General.

332 (9)~~(8)~~ Each agency inspector general shall, to the extent
 333 both necessary and practicable, include on his or her staff
 334 individuals with electronic data processing auditing experience.

335 Section 2. This act shall take effect July 1, 2008.