

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Operations Committee

BILL: CS/SB 498

INTRODUCER: Governmental Operations Committee and Senator Bennett

SUBJECT: Agency Inspectors General

DATE: March 27, 2008 REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill requires that agency inspectors general comply with standards published by the Association of Inspectors General, and requires that final audit or investigation reports contain the responses of contracting entities subject to audits or investigations. Inspectors general are required to submit to their agency heads all complaints relating to their duties or alleged misconduct of their employees, and agencies under the direction of the Governor must also submit such complaints to the Chief Inspector General.

This bill amends s. 20.055 of the 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

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

created to provide a focal point of accountability efforts within the agency. Each office is responsible for:

- 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.

The Council on State Agency Inspectors General

On January 26, 2005, the Office of the Inspector General of the Florida Department of Children and Families (DCF) released its report on investigation 2004-0080, which contained allegations, four of which were deemed supported, about actions taken by the then executive director of Hillsborough Kids, Inc. On April 29, 2005, the then Secretary of DCF requested that the Office of the Chief Inspector General (CIG) conduct an independent review of the 2004-0080 investigation. The CIG Report on Case# 200504290005 was released on July 28, 2005, and determined that the DCF report contained findings without sufficient evidence to support that the then executive director violated any law, rule, regulation, or policy. The CIG report also made recommendations specific to procedures in the Office of the Inspector General of DCF.

Spurred largely by this series of events, the Legislature during the 2006 Regular Session created² the Council on State Agency Inspectors General (council) at s. 14.235, F.S., for the purpose of developing recommendations relating to the creation of an independent review process for investigations and audits conducted by state agency inspectors general. The council consisted of the Chief Inspector General and inspector generals from the Office of the Attorney General, Agency for Workforce Innovation, Department of Business and Professional Regulation, and Fish and Wildlife Conservation Commission. Section 14.235(7), F.S., required³ that the review process developed and 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 state agency inspector general's final report;
- specifically identify the entities and individuals entitled to submit a response, and identify the circumstances under which the entity's response must be attached to the state agency inspector general's final report;
- provide a hearing process entitling entities contracting with state agencies and individuals substantially affected by the findings, conclusions, or recommendations with an opportunity to present to the Chief Inspector General any additional material relevant to the state agency inspector general's final report. The review process must permit the Chief Inspector General to independently investigate the state agency inspector general's report and the original investigation; and
- identify ancillary issues including public records concerns, special conditions for whistle-blower's investigations, and exemptions for specific categories of audits or investigations.

The Association of Inspectors General

The Association of Inspectors General (association) is a nonprofit organization that seeks to “seeks to foster and promote public accountability and integrity in the general areas of prevention, examination, investigation, audit, detection, elimination and prosecution of fraud, waste and abuse, through policy research and analysis; standardization of practices, policies,

² Ch. 2006-219, L.O.F.

³ Section 14.235, F.S., was repealed on June 30, 2007, pursuant to subsection 10.

conduct and ethics; encouragement of professional development by providing and sponsoring educational programs; and the establishment of professional qualifications, certifications, and licensing.”⁴

The association publishes General Principles and Standards for Offices of Inspector General (standards); the most recent revision is dated May 2004. The standards published by the association include:

- Statement of Principles
- Quality Standards for Offices
- Quality Standards for Investigations
- Quality Standards for Inspections, Evaluations, and Reviews
- Quality Standards for Audits

The association states in the introduction to the standards that offices of inspector general adopt the Standards for their use with a statement that they are adopted “insofar as they do not conflict with statute, regulation, executive order, or other policy of this office.”⁵

III. Effect of Proposed Changes:

The bill substantially amends s. 20.055, F.S., relating to agency inspectors general.

The bill adds several definitions to subsection (1), including “individuals substantially affected,” “entities contracting with the state,” “additional material relevant,” and “original investigation.”

The bill adds to the list of duties of agency inspectors general to require that they comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.

The bill amends subsection (3) to require that the Chief Inspector General (CIG) must be notified in writing before the hiring or termination of an agency inspector general, for those agencies under the direction of the Governor. The bill also provides that agency staff may not prevent the inspector general from carrying out his or her duties. The bill removes the phrase “director of auditing” from paragraph (d), which appears to have the effect of allowing an agency head or agency staff to prevent or prohibit a director of auditing from carrying out his or her duties.

The bill amends subsection (5) to require that when a director of auditing, and not the agency inspector general, performs an audit, the audit must be in accordance with current *International Standards for the Professional Practice of Internal Auditing* as published by the Institute of Internal Auditors, Inc. The bill deletes the provision that the standards include Internal Auditing Standards or Statements on Internal Auditing Standards.

The bill adds a requirement that at the conclusion of a published audit about a specific singular entity that contracts with the state, the inspector general must submit findings to the subject, who

⁴ All information on the Association of Inspectors General was obtained on January 10, 2008, from the website at <http://www.inspectorsgeneral.org/mc/page.do>.

⁵ Introduction to the Standards, as approved by the Board of Directors of the Association on May 16, 2001.

then may respond to any adverse findings within 20 working days. The response and the inspector general's rebuttal must be included in the final audit report.

The bill amends subsection (6) to require that when an inspector general concludes an investigation in which the subject is a specific entity contracting with the state, or an individual substantially affected by the investigation, the inspector general must submit findings to the subject, who may then respond. The response and inspector general rebuttal must be included in the final report.

In subsection (8), the bill adds a requirement that each agency inspector general (IG) must timely report to the agency head all written complaints concerning IG duties or allegations of misconduct against an IG or IG employees, if received from contractors or persons substantially affected. Agencies under the Governor's direction must also report such complaints to the Chief Inspector General.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The CIG could incur costs relating to investigating complaints against agencies inspectors general, depending on the number of those complaints. The CIG has estimated those costs based on a range of potential scenarios, and projected a minimal cost of \$119,486.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires that agency inspectors general “comply with” the General Principles and Standards for Offices of Inspector General (Standards) published by the Association of Inspectors General (Association), which include some fairly specific requirements, not all of which are specific to conducting the review. For example, the Continuing Professional Education/Development standards require 80 hours of continuing education every two years for staff performing investigations, inspections, evaluations, reviews, or audits.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Operations on March 27, 2008:

The committee substitute deletes provisions that would have required the Chief Inspector General to conduct investigations and develop procedures for quasi-judicial proceedings relating to complaints about agency inspectors general. The CS also deletes a provision that would have allowed for the award of costs and fees to contracting entities if an inspector general’s findings were not substantially justified.

- B. **Amendments:**

None.