

By Senator Bennett

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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 an audit to specified persons or entities;
7 requiring agencies under the Governor to notify the Chief
8 Inspector General of inspector general appointments and
9 terminations; prohibiting agency staff from preventing or
10 prohibiting the inspector general or director of auditing
11 from initiating, carrying out, or completing any audit or
12 investigation; requiring audits to be conducted in
13 accordance with the current International Standards for
14 the Professional Practice of Internal Auditing; requiring
15 the inspector general of each state agency to report
16 certain written complaints to the Chief Inspector General;
17 requiring the Chief Inspector General to fulfill certain
18 duties and responsibilities; requiring a state agency to
19 reimburse legal fees and costs that are incurred by
20 certain individuals and entities under certain conditions;
21 providing an effective date.

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

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

27 20.055 Agency inspectors general.--

28 (1) For the purposes of this section:

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

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

37 (b) "Agency head" means a public official such as the
38 Governor, a Cabinet officer, a secretary as defined in s.
39 20.03(5), or an executive director as defined in s. 20.03(6). It
40 also includes the chair of the Public Service Commission, the
41 Director of the Office of Insurance Regulation of the Financial
42 Services Commission, the Director of the Office of Financial
43 Regulation of the Financial Services Commission, and the Chief
44 Justice of the State Supreme Court. The term does not include the
45 head of, or an officer of, a private entity operating as a for-
46 profit or not-for-profit entity.

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

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59 a former employee's term of state employment.

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, that 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 on
66 behalf of the state agency. The relationship may be evidenced by
67 payment by warrant or purchasing card, contract, purchase order,
68 provider agreement, or other such mutually agreed upon
69 relationship.

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

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

86 (2) The Office of Inspector General is hereby established
87 in each state agency to provide a central point for coordination

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88 of and responsibility for activities that promote accountability,
89 integrity, and efficiency in government. It shall be the duty and
90 responsibility of each inspector general, with respect to the
91 state agency in which the office is established, to:

92 (a) Advise in the development of performance measures,
93 standards, and procedures for the evaluation of state agency
94 programs.

95 (b) Assess the reliability and validity of the information
96 provided by the state agency on performance measures and
97 standards, and make recommendations for improvement, if
98 necessary, prior to submission of those measures and standards to
99 the Executive Office of the Governor pursuant to s. 216.0166(1).

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

103 (d) Provide direction for, supervise, and coordinate
104 audits, investigations, and management reviews relating to the
105 programs and operations of the state agency, except that when the
106 inspector general does not possess the qualifications specified
107 in subsection (4), the director of auditing shall conduct such
108 audits.

109 (e) Conduct, supervise, or coordinate other activities
110 carried out or financed by that state agency for the purpose of
111 promoting economy and efficiency in the administration of, or
112 preventing and detecting fraud and abuse in, its programs and
113 operations.

114 (f) Keep such agency head informed concerning fraud,
115 abuses, and deficiencies relating to programs and operations
116 administered or financed by the state agency, recommend

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117 corrective action concerning fraud, abuses, and deficiencies, and
118 report on the progress made in implementing corrective action.

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

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

125 (i) Ensure that an appropriate balance is maintained
126 between audit, investigative, and other accountability
127 activities.

128 (j) Comply with the General Principles and Standards for
129 Offices of Inspector General as published and revised by the
130 Association of Inspectors General.

131 (3) (a) The inspector general shall be appointed by the
132 agency head. For agencies under the direction of the Governor,
133 the appointment shall be made after notifying the Governor and
134 the Chief Inspector General in writing, at least 7 days prior to
135 an offer of employment, of the agency head's intention to hire
136 the inspector general.

137 (b) Each inspector general shall report to and be under the
138 general supervision of the agency head and shall not be subject
139 to supervision by any other employee of the state agency. The
140 inspector general shall be appointed without regard to political
141 affiliation.

142 (c) An inspector general may be removed from office by the
143 agency head. For agencies under the direction of the Governor,
144 the agency head shall notify the Governor and the Chief Inspector
145 General, in writing, of the intention to terminate the inspector

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146 | general at least 7 days prior to the removal. For state agencies
147 | under the direction of the Governor and Cabinet, the agency head
148 | shall notify the Governor and Cabinet in writing of the intention
149 | to terminate the inspector general at least 7 days prior to the
150 | removal.

151 | (d) The agency head or agency staff shall not prevent or
152 | prohibit the inspector general ~~or director of auditing~~ from
153 | initiating, carrying out, or completing any audit or
154 | investigation.

155 | (4) To ensure that state agency audits are performed in
156 | accordance with applicable auditing standards, the inspector
157 | general or the director of auditing within the inspector
158 | general's office shall possess the following qualifications:

159 | (a) A bachelor's degree from an accredited college or
160 | university with a major in accounting, or with a major in
161 | business which includes five courses in accounting, and 5 years
162 | of experience as an internal auditor or independent postauditor,
163 | electronic data processing auditor, accountant, or any
164 | combination thereof. The experience shall at a minimum consist of
165 | audits of units of government or private business enterprises,
166 | operating for profit or not for profit; or

167 | (b) A master's degree in accounting, business
168 | administration, or public administration from an accredited
169 | college or university and 4 years of experience as required in
170 | paragraph (a); or

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

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175 (5) In carrying out the auditing duties and
176 responsibilities of this act, each inspector general shall review
177 and evaluate internal controls necessary to ensure the fiscal
178 accountability of the state agency. The inspector general shall
179 conduct financial, compliance, electronic data processing, and
180 performance audits of the agency and prepare audit reports of his
181 or her findings. The scope and assignment of the audits shall be
182 determined by the inspector general; however, the agency head may
183 at any time direct the inspector general to perform an audit of a
184 special program, function, or organizational unit. The
185 performance of the audit shall be under the direction of the
186 inspector general, except that if the inspector general does not
187 possess the qualifications specified in subsection (4), the
188 director of auditing shall perform the functions listed in this
189 subsection.

190 (a) Such audits shall be conducted in accordance with the
191 current International Standards for the Professional Practice of
192 Internal Auditing as ~~and subsequent Internal Auditing Standards~~
193 ~~or Statements on Internal Auditing Standards~~ published by the
194 Institute of Internal Auditors, Inc., or, where appropriate, in
195 accordance with generally accepted governmental auditing
196 standards. All audit reports issued by internal audit staff shall
197 include a statement that the audit was conducted pursuant to the
198 appropriate standards.

199 (b) Audit workpapers and reports shall be public records to
200 the extent that they do not include information which has been
201 made confidential and exempt from the provisions of s. 119.07(1)
202 pursuant to law. However, when the inspector general or a member
203 of the staff receives from an individual a complaint or

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204 information that falls within the definition provided in s.
205 112.3187(5), the name or identity of the individual shall not be
206 disclosed to anyone else without the written consent of the
207 individual, unless the inspector general determines that such
208 disclosure is unavoidable during the course of the audit or
209 investigation.

210 (c) The inspector general and the staff shall have access
211 to any records, data, and other information of the state agency
212 he or she deems necessary to carry out his or her duties. The
213 inspector general is also authorized to request such information
214 or assistance as may be necessary from the state agency or from
215 any federal, state, or local government entity.

216 (d) At the conclusion of each audit, the inspector general
217 shall submit preliminary findings and recommendations to the
218 person responsible for supervision of the program function or
219 operational unit who shall respond to any adverse findings within
220 20 working days after receipt of the tentative findings. Such
221 response and the inspector general's rebuttal to the response
222 shall be included in the final audit report.

223 (e) At the conclusion of an audit in which the results of
224 the audit are published and disbursed and the subject of the
225 audit is a specific, singular entity contracting with the state,
226 the inspector general shall submit findings to the subject who
227 shall respond to any adverse findings within 20 working days.
228 Such response and the inspector general's rebuttal to the
229 response, if any, shall be included in the final audit report.

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

232 (g)~~(f)~~ The Auditor General, in connection with the

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233 independent postaudit of the same agency pursuant to s. 11.45,
234 shall give appropriate consideration to internal audit reports
235 and the resolution of findings therein. The Legislative Auditing
236 Committee may inquire into the reasons or justifications for
237 failure of the agency head to correct the deficiencies reported
238 in internal audits that are also reported by the Auditor General
239 and shall take appropriate action.

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

250 (i) ~~(h)~~ The inspector general shall develop long-term and
251 annual audit plans based on the findings of periodic risk
252 assessments. The plan, where appropriate, should include
253 postaudit samplings of payments and accounts. The plan shall show
254 the individual audits to be conducted during each year and
255 related resources to be devoted to the respective audits. The
256 Chief Financial Officer, to assist in fulfilling the
257 responsibilities for examining, auditing, and settling accounts,
258 claims, and demands pursuant to s. 17.03(1), and examining,
259 auditing, adjusting, and settling accounts pursuant to s. 17.04,
260 may utilize audits performed by the inspectors general and
261 internal auditors. For state agencies under the Governor, the

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262 | audit plans shall be submitted to the Governor's Chief Inspector
263 | General. The plan shall be submitted to the agency head for
264 | approval. A copy of the approved plan shall be submitted to the
265 | Auditor General.

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

273 | (a) Receive complaints and coordinate all activities of the
274 | agency as required by the Whistle-blower's Act pursuant to ss.
275 | 112.3187-112.31895.

276 | (b) Receive and consider the complaints which do not meet
277 | the criteria for an investigation under the Whistle-blower's Act
278 | and conduct, supervise, or coordinate such inquiries,
279 | investigations, or reviews as the inspector general deems
280 | appropriate.

281 | (c) Report expeditiously to the Department of Law
282 | Enforcement or other law enforcement agencies, as appropriate,
283 | whenever the inspector general has reasonable grounds to believe
284 | there has been a violation of criminal law.

285 | (d) Conduct investigations and other inquiries free of
286 | actual or perceived impairment to the independence of the
287 | inspector general or the inspector general's office. This shall
288 | include freedom from any interference with investigations and
289 | timely access to records and other sources of information.

290 | (e) At the conclusion of each investigation in which the

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291 subject of the investigation is a specific entity contracting
292 with the state or an individual substantially affected by the
293 findings, conclusions, and recommendations, the inspector general
294 shall, consistent with chapter 119, submit findings to the
295 subject who shall respond to any adverse findings within 10 days.
296 Such response and the inspector general's rebuttal to the
297 response, if any, shall be included in the final investigative
298 report.

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

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

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

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

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

318 (d) The identification of each significant recommendation
319 described in previous annual reports on which corrective action

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320 | has not been completed.

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

323 | (8) The inspector general in each agency under the
324 | Governor's jurisdiction shall timely report to the Chief
325 | Inspector General all written complaints received concerning the
326 | duties and responsibilities outlined in this section or any
327 | misconduct alleged related to the office of the inspector general
328 | or its employees.

329 | (9) For agencies under the Governor's jurisdiction, the
330 | Chief Inspector General in the Executive Office of the Governor,
331 | as defined in s. 14.32, shall:

332 | (a) Receive and consider all complaints against offices of
333 | inspectors general or their employees and conduct, supervise, or
334 | coordinate such inquiries, investigations, or reviews as the
335 | Chief Inspector General considers appropriate.

336 | (b) Develop policies and procedures for reviewing
337 | complaints against a state agency office of inspector general or
338 | its employees, including, but not limited to, complaints
339 | regarding misconduct, failure to properly follow professional
340 | standards, or any other violation of agency policy, rule, or law
341 | which is consistent with the definitions in this section and s.
342 | 14.32. The policies and procedures must identify exemptions from
343 | this process, including, but not limited to, whistle-blower
344 | investigations conducted in accordance with ss. 112.3187-
345 | 112.31895. These policies and procedures must afford entities
346 | contracting with state agencies, and individuals substantially
347 | affected by the findings, conclusions, and recommendations, a
348 | meaningful opportunity to express their complaint and present

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349 additional material relevant to the original investigation.
350 Policies and procedures specified herein are not subject to
351 rulemaking under chapter 120.

352 (c) Distribute the report of any investigation conducted or
353 supervised by the Chief Inspector General to the office of the
354 inspector general of the state agency, the agency head of the
355 subject's employing agency, and the person that filed the
356 complaint against the office of inspector general of the state
357 agency or its employees.

358 (10) If a state agency inspector general's reported adverse
359 findings regarding entities contracting with state agencies and
360 individuals substantially affected by the findings, conclusions,
361 and recommendations are determined to be not substantially
362 justified after an informal evidentiary hearing by a hearing
363 master selected by agreement of the state agency and the Chief
364 Inspector General, the agency shall reimburse reasonable legal
365 fees and costs not to exceed \$50,000 specifically associated with
366 filing and pursuing the complaints, which are incurred by the
367 entities contracting with state agencies and individuals
368 substantially affected by the findings, conclusions, and
369 recommendations.

370 (11)~~(8)~~ Each agency inspector general shall, to the extent
371 both necessary and practicable, include on his or her staff
372 individuals with electronic data processing auditing experience.

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