

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 Committee on Governmental Oversight and Accountability

BILL: SB 1020

INTRODUCER: Senator Soto

SUBJECT: Inspectors General

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	Favorable
2.			CA	
3.			AP	

I. Summary:

SB 1020 requires the Chief Inspector General of the State of Florida to post on the website of the Executive Office of the Governor the final investigative reports issued by the Office of Chief Inspector General and the agency inspector generals. Such postings do not include reports that are confidential or otherwise exempt from public disclosure.

The bill also requires each agency inspector general to publish on the agency's website the same final investigative reports, including all responses and rebuttals. Again, the postings may not include the reports that are confidential or otherwise exempt from public disclosure.

The bill requires each inspector general of a local government entity to publish on the local government entity's website any final investigative report. Postings may not include the reports that are confidential or otherwise exempt from public disclosure.

II. Present Situation:

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 is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor. The Chief Inspector General is appointed by and serves at the pleasure of the Governor, and serves as the inspector general for the Executive Office of the Governor. The Chief Inspector General must:

- Initiate investigations, recommend policies, and carry out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government.
- Investigate any administrative action of any agency under the direct supervision of the Governor.
- Request assistance and information as necessary for the performance of the duties.

- Examine the records and reports of any agency under the direct supervision of the Governor.
- Coordinate complaint-handling activities with agencies.
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline.
- Report to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are grounds to believe that there has been a violation of criminal law or that a civil action should be initiated.
- Act as liaison with outside agencies and the Federal Government to promote accountability, integrity, and efficiency in state government.
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction.
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor.
- Conduct special investigations and management reviews at the request of the Governor.

The Chief Inspector General has various duties relating to public-private partnerships, including advising on internal controls, conducting audits, investigating complaints of fraud, and making recommendations for improvements in the actions taken by public-private partnerships to meet performance standards.

Agency Inspectors General

Duties

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

- 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.

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 Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, and the state courts system are considered "state agencies," in addition to the departments created in Ch. 20, F.S.

- Maintaining a balance among audit, investigative, and other accounting activities of the agency.
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.²

Appointment

Inspectors general are appointed by the agency head. For agencies under the direction of the Governor, the appointment must be made after notifying the Governor and the Chief Inspector General in writing, at least seven days prior to an offer of employment, of the agency head's intention to hire the inspector general.³

Removal and Qualifications

Inspectors general may be removed only by the agency head. For agencies under the direction of the Governor, the agency head must notify the Governor and the Chief Inspector General, in writing, of the intention to terminate the inspector general, at least seven days prior to the removal. For state agencies under the direction of the Governor and Cabinet, the agency head must notify the Governor and Cabinet, in writing, of the intention to terminate the inspector general, at least seven days prior to the removal.⁴ Inspectors general must possess minimum educational and experience qualifications,⁵ and the investigations they conduct must adhere to specific internal auditing standards.

Internal Audits

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.⁶

Audit work papers 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

² Section 20.055(2), F.S.

³ Section 20.055(3)(a), F.S.

⁴ Section 20.055(3)(c), F.S.

⁵ Section 20.055(4), F.S.

⁶ Section 20.055(5)(a), F.S.

s. 119.07(1), F.S., or information protected under s. 112.3187(5), F.S., of the Whistle-blower's Act.⁷

Reporting

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.⁸

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 post-audit 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.⁹

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.¹⁰

More Duties

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 post-audit 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.¹¹

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.

⁷ Section 20.055(5)(b), F.S.

⁸ Section 20.055(5)(d), F.S.

⁹ Section 20.055(5)(g), F.S.

¹⁰ Section 20.055(5)(h), F.S.

¹¹ Section 20.055(5)(i), F.S.

For these purposes, each inspector general must do the following:

- 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.
- At the conclusion of an audit the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report.
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.¹²

Each inspector general must submit a yearly report on its activities to the agency head, and provide any written complaints about the operations of the inspector general.¹³

III. Effect of Proposed Changes:

Section 1 amends s. 14.32, F.S., to add a requirement that the Chief Inspector General publish, on the website of the Executive Office of the Governor, final investigative reports performed by the Chief Inspector General or received from agency inspectors general. The Chief Inspector General may not publish a report on the website if the investigation is confidential or otherwise exempt from disclosure by law. The Chief Inspector General must publish reports within 10 days after finalizing the report or receiving the report from an agency inspector general.

Section 2 amends s. 20.055, F.S., to add a requirement that if an investigation is not confidential or otherwise exempt from disclosure by law, an agency inspector general must publish final investigative reports, including all responses and rebuttals, on the agency's website. Within 10 days after finalizing a report, the inspector general must publish the report and provide a copy to the Chief Inspector General for publication on the website of the Executive Office of the Governor.

Section 3 creates s. 286.0015, F.S., to require that if an investigation is not confidential or otherwise exempt from disclosure by law, a unit of local government must publish on its website the final investigative report by an inspector general prepared for or on behalf of the unit of local government. The unit of local government must publish a report under this section within

¹² Section 20.055(6), F.S.

¹³ Section 20.055(7) and (8), F.S.

10 days after finalizing the report. An investigation becomes final when the audit report or investigative report is presented to the unit of local government.

For purposes of this requirement, the bill defines the term “unit of local government” as a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds” unless certain requirements are met. However, several exemptions and exceptions exist. The exceptions to the constitutional provision include a legislative determination that the law fulfills an important state interest and one of the following relevant conditions: (a) the law requiring such expenditure is approved by 2/3 of the membership of each chamber or (b) the expenditure is required to comply with a law that applies to all persons similarly situated.

In this instance, the bill does not contain a legislative determination that the bill fulfills an important state interest. However, the bill appears to apply to all persons similarly situated (state and local governmental entities in Florida that have inspectors general).

Subsection (d) of Art. VII, Sec. 18, of the State Constitution exempts those laws that have an insignificant fiscal impact from the requirements of the mandates provision. Whether a particular bill results in a significant impact on cities and counties must be determined on an aggregate, statewide basis. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.9 million for FY 2013-2014¹⁴), are exempt.¹⁵

The financial impact on cities and counties is unknown at this time. If the overall aggregate fiscal impact on cities and counties exceeds \$1.9 million per year, the bill, to be binding on all cities and counties, must meet the relevant conditions as an exception to the constitutional requirements.

B. Public Records/Open Meetings Issues:

None.

¹⁴ Based on the Demographic Estimating Conference’s final population estimate for April 1, 2014, which was adopted on February 10, 2014. The Executive Summary can be found at:

<http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf> (last visited on February 28, 2014).

¹⁵ See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Fiscal Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited on March 5, 2013).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The cost to comply with the provisions of this bill is unknown. However, the bill will increase the workload on state agencies, local governments and the Chief Inspector General to properly redact confidential and exempt information in final investigative reports and to post such reports on the appropriate websites.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the final investigative reports to be published 10 days after the agency finalizes the report. This requirement may conflict with s. 112.532, F.S., relating to law enforcement officers' and correctional officers' rights. The final investigative report under s. 112.532, F.S., remains confidential until the employing law enforcement agency makes a final determination whether to issue a notice of disciplinary action. If the two sections are read together, the agency will not be required to publish a final investigative report until the agency makes that final determination on its action against the employee.

The bill appears to exempt from publication only those investigations that are confidential or otherwise exempt from disclosure. Information contained in the final investigative reports retains its status of confidential and exempt under other laws and must be redacted prior to publication.

VIII. Statutes Affected:

This bill substantially amends sections 14.32 and 20.055 of the Florida Statutes.

This bill creates section 286.0015 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
