

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1328

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Latvala

SUBJECT: Inspectors General

DATE: April 21, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Shettle</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1328 modifies how the Chief Inspector General and agency inspectors general are appointed, supervised, and removed. Currently, the Chief Inspector General is appointed and removed solely by the Governor. The bill makes the Governor's appointment of a Chief Inspector General subject to confirmation by the Senate.

Currently, agency inspectors general are appointed by and report to agency heads. The bill provides that for agencies under the jurisdiction of the Governor, agency inspectors general are to be appointed and removed (only for cause) by the Chief Inspector General, with notice to the Governor; are to report to the Chief Inspector General; and may hire and fire their staff independently of the agency. For other state agencies, inspectors general are to be appointed and removed by agency heads. For agencies under the jurisdiction of the Governor, independent legal counsel by the Chief Inspector General must be provided.

The bill requires that offices of inspectors general are to have their own budgets within their respective state agencies. This provision will not have an overall fiscal impact to the state agencies.

**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 agency<sup>1</sup> 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.

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<sup>1</sup> 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.

- 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.
- 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.<sup>2</sup>

### ***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.<sup>3</sup>

### ***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.<sup>4</sup> Inspectors general must possess minimum educational and experience qualifications,<sup>5</sup> 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

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<sup>2</sup> Section 20.055(2), F.S.

<sup>3</sup> Section 20.055(3)(a), F.S.

<sup>4</sup> Section 20.055(3)(c), F.S.

<sup>5</sup> Section 20.055(4), F.S.

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.<sup>6</sup>

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

### ***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.<sup>8</sup>

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.<sup>9</sup>

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 (OPPAGA). No later than six months after the Auditor General or the OPPAGA 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.<sup>10</sup>

### ***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.<sup>11</sup>

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<sup>6</sup> Section 20.055(5)(a), F.S.

<sup>7</sup> Section 20.055(5)(b), F.S.

<sup>8</sup> Section 20.055(5)(d), F.S.

<sup>9</sup> Section 20.055(5)(g), F.S.

<sup>10</sup> Section 20.055(5)(h), F.S.

<sup>11</sup> Section 20.055(5)(i), F.S.

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 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.<sup>12</sup>

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.<sup>13</sup>

### **III. Effect of Proposed Changes:**

#### **Chief Inspector General**

**Section 1** amends s. 14.32, F.S., to change how the Chief Inspector General is appointed and removed. Currently, the Governor appoints the Chief Inspector General, who serves, without a statutorily-prescribed term, at the pleasure of the Governor. The bill requires that appointment of the Chief Inspector General by the Governor is subject to confirmation by the Senate.

The Chief Inspector General must also provide for independent legal counsel for inspectors general in agencies under the jurisdiction of the Governor.

#### **Agency Inspectors General**

**Section 2** amends s. 20.055, F.S., relating to the duties of agency inspectors general.

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<sup>12</sup> Section 20.055(6), F.S.

<sup>13</sup> Section 20.055(7) and (8), F.S.

***Appointment***

The bill changes the appointment process for agency inspectors general, who are currently appointed by the agency head. The bill provides that for state agencies under the jurisdiction of the Governor, the Chief Inspector General appoints the agency inspector general. For all other state agencies, the agency head appoints the inspector general; the agency head or Chief Inspector General must notify the Governor in writing seven days in advance of the hiring of an agency inspector general.

***Supervision***

The inspector general will report to and be under the supervision of the agency head. In addition, for state agencies under the jurisdiction of the Governor, the inspector general will report to the Chief Inspector General, and may hire and remove staff within the Office of the Inspector General in consultation with the Chief Inspector General but independently of the respective agency. Inspectors general are not subject to supervision by any other agency employee.

***Removal***

For state agencies under the jurisdiction of the Governor, the Chief Inspector General may remove, for cause, the inspector general. The Chief Inspector General must give 21 days' notice to the Governor before removing an inspector general, who may present written objections to the agency head or Governor. For all other state agencies, the inspector general may be removed by the agency head.

***Budget***

Within each agency, the Office of Inspector General must have its own budget, developed in consultation with the Chief Inspector General, and sufficient to meet its mission.

***Reports and Responses to Reports***

For state agencies under the jurisdiction of the Governor, the agency inspector general must submit:

- Final reports to the agency head, the Auditor General, and the Chief Inspector General; and
- Responses to OPPAGA and Auditor General reports to the Chief Inspector General; and
- Annual reports on inspector general activities to the Chief Inspector General.

The bill takes effect July 1, 2014.

**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:

CS/SB 1328 requires that the Office of Inspector General shall have its own budget within the respective state agency, developed in consultation with the Chief Inspector General. This provision will not have an overall fiscal impact to the state agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

**IX. 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 Oversight and Accountability on April 3, 2014:**

The CS removes a provision that would have required the Governor to consult with the Cabinet on the appointment of the Chief Inspector General and clarifies the appointment, supervision, and removal procedures for agency inspectors general.

B. Amendments:

None.