

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 Fiscal Policy

BILL: PCS/CS/SB 1304 (560970)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); Governmental Oversight and Accountability Committee; and Senator Latvala

SUBJECT: Inspectors General

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1304 amends s. 14.32, F.S., to authorize the Chief Inspector General or designee to hire or retain legal counsel and issue and enforce subpoenas under certain circumstances. The bill amends s. 20.055, F.S., related to agency inspectors general, to specifically include the State Board of Administration and the Office of Early Learning of the Department of Education. The bill prescribes additional hiring requirements, employment qualifications, and terms of employment for inspectors general and employees of the office of inspector general.

Also, the bill requires that records must be accessible to an agency inspector general during an audit or investigation. The bill requires specified personnel to cooperate with requests of an agency inspector general during investigations, audits, inspections, reviews and hearings.

In addition, the bill requires, beginning July 1, 2015, certain language be included in state contracts, bids, and proposals.

The bill has an indeterminate fiscal impact.

II. Present Situation:

Chief Inspector General

Section 14.32, F.S., creates the Office of Chief Inspector General in 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.¹ 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.² Some of the duties of the Chief Inspector General include:

- Initiate investigations, recommend policies, and carry out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government;
- Investigate and examine records of any agency under the direct supervision of the Governor, and coordinate complaint-handling activities with the agencies;
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline;
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction; and
- Conduct special investigations and management reviews at the request of the Governor.³

The Chief Inspector General also has various duties relating to public-private partnerships, including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, and monitoring contract compliance.⁴

Agency Inspectors General

Duties

Section 20.055, F.S., requires each state agency of state government to have an inspector general office (OIG).⁵ The OIG is created to provide a focal point of accountability efforts within the agency.⁶ The responsibilities of each OIG include:⁷

- Advising in the development, assessment, and review of performance measures, standards, internal controls, and procedures for evaluation of state agency programs and related rules.
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency.
- Informing, reporting, and recommending corrective action to the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General about fraud,

¹ Section 14.32(1), F.S.

² *Id.*

³ Section 14.32(2), F.S.

⁴ Section 14.32(3), F.S.

⁵ Section 20.055(1)(d), F.S., defines the term "state agency" as "each department created pursuant to this chapter and the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, and the state courts system."

⁶ Section 20.055(2), F.S.

⁷ *Id.*

abuses, and deficiencies relating to programs and operations administered or financed by the state agency.

- Coordinating agency audit, investigative, and other accountability activities, and outside the agency with the Auditor General, federal auditors, and other governmental entities, to avoid duplication and maximize effectiveness.
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.
- Conducting investigations pursuant to the Whistle-blower's Act.⁸
- Developing long-term and annual audit plans based on the findings of periodic risk assessments.⁹ Plans, where appropriate, should include post-audit samplings of payments and accounts.

In carrying out the investigative duties and responsibilities, the inspector general initiates, conducts, supervises, and coordinates investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.¹⁰

Each inspector general must submit an annual report on its activities to the agency head,¹¹ and provide any written complaints about the operations of the inspector general.¹² Audit plans and reports are submitted to the Auditor General.¹³

Appointment

For state agencies under the jurisdiction of the Governor and Cabinet, the inspector general is appointed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general is appointed by the Chief Inspector General. The agency head or Chief Inspector General is required to notify the Governor in writing of their intent to hire the inspector general at least 7 days prior to an offer of employment. Inspectors general are appointed without regard to political affiliation.¹⁴

Removal

Inspectors general may be removed by the agency head for agencies under the jurisdiction of the Governor and Cabinet. For agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the Chief Inspector General for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties. At least 21 days before removal, the Chief Inspector General must notify the Governor in writing of his or her intention to remove an inspector general. For state agencies under the jurisdiction of the Governor and Cabinet, the agency head shall notify the Governor and Cabinet in writing of his or her intention to remove the inspector general at least 21 days before the

⁸ The Whistle-blower's Act can be found in ss. 112.3187-112.31895, F.S.

⁹ Section 20.055(5)(i), F.S.

¹⁰ Section 20.055(6), F.S.

¹¹ Section 20.055(7), F.S.

¹² Section 20.055(8), F.S. For agencies under the jurisdiction of the Governor, the inspector general must provide the complaint to the Chief Inspector General.

¹³ Section 20.055(5)(f)-(i), F.S.

¹⁴ Section 20.055(3)(a), F.S.

removal. If the inspector general disagrees with the removal, the inspector general may present objections in writing to the Governor within the 21-day period.¹⁵

Qualifications

To ensure that state agency audits are performed in accordance with applicable auditing standards, that the inspector general or the director of auditing within the inspector general's office must have at least one of the following qualifications:

- A bachelor's degree from an accredited college or university with a major in accounting or business with a minimum of five accounting courses, and 5 years' experience; or
- A master's degree in accounting, business administration, or public administration from an accredited college or university, and 4 years of experience; or
- A certified public accountant license, or certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and 4 years of experience.¹⁶

The experience must be as an internal auditor, independent postauditor, electronic data processing auditor, accountant, or any combination thereof, and, at a minimum consist of audits of units of government or private business enterprises.

Elected Office/Political Office Restrictions

There are no current restrictions on inspectors general or OIG staff regarding holding elective office, holding office in a political party or political committee, participating in a political campaign of any candidate for public office, making campaign contributions, or making campaign endorsements, while serving in the office of inspector general.

Subpoenas

The Chief Inspector General and agency inspectors general do not currently have the authority to issue subpoenas.

Internal Audits

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.¹⁷ 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.¹⁸ If the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 14.32, F.S., to authorize the Chief Inspector General or his or her designee to hire or retain legal counsel and to issue and serve subpoenas, for agencies under the

¹⁵ Section 20.055(3)(c), F.S.

¹⁶ Section 20.055(4), F.S.

¹⁷ Section 20.055(5), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

jurisdiction of the Governor, to compel attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium.

For noncompliance with issuance of a subpoena or subpoena duces tecum, the Chief Inspector General is authorized to petition the circuit court of the county where the person resides or has a principal place of business to obtain an order requiring the person to appear and testify or produce the requested documents.

The Chief Inspector General is also authorized to require a person to file a statement in writing, under oath or otherwise, as to facts and circumstances to be audited, examined, or investigated.

Section 2 amends s. 20.055, F.S., to revise definitions of the terms “agency head” and “state agency” to include the State Board of Administration (SBA) and Office of Early Learning (OEL). All agencies identified under s. 20.055, F.S., must establish an OIG and comply with the requirements of s. 20.055, F.S. These two agencies currently have OIGs.

Appointment

The bill requires an agency head, or for agencies under the jurisdiction of the Governor, the Chief Inspector General, to conduct a national search for a new inspector general within 60 days after a vacancy or anticipated vacancy and to set the salary of the inspector general. The bill allows an interim inspector general to be appointed from other office of inspector general management personnel until a successor is appointed.

The bill prohibits an elected official from being appointed as inspector general within 5 years after the end of the individual’s term of service. However, this restriction does not prohibit the reappointment of a current inspector general.

The bill clarifies that for state agencies under the jurisdiction of the Governor, the inspector general is under the general supervision of the agency head for administrative purposes.

Qualifications

For agencies under the Governor, the inspector general shall be selected on the basis of integrity, leadership capability, and experience in accounting, auditing, financial analysis, law, management analysis, program evaluation, public administration, investigation, criminal justice administration, or other closely related field.

This bill requires the following qualifications, certifications, training, experience, education, and other criteria for inspectors general:

- An inspector general must possess at appointment or obtain within the first year after appointment, a certification from the Association of Inspectors General as a certified inspector general.
- An inspector general shall have at least one other related professional certification, such as certified inspector general investigator, certified inspector general auditor, certified public

accountant, certified internal auditor, certified governmental financial manager, certified fraud examiner, certified financial crimes investigator, or be a licensed attorney.

- An inspector general is subject to level 2 background screening under ch. 435, F.S.
- A candidate for inspector general must have a 4-year degree from an accredited institution of higher learning or have at least 5 years of experience in at least one of the following areas:
 - Inspector general;
 - Local, state, or federal law enforcement officer;
 - Local, state or federal court judge;
 - Administration and management of complex audits and investigations;
 - Senior-level auditor or comptroller;
 - Supervisory experience in an office of inspector general or an investigative public agency similar to an office of inspector general;
 - Managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or organizations; or
 - An advanced degree in law, accounting, public administration, or other relevant field may substitute for 1 year of required experience.

Political Office/Party Restrictions

The bill prohibits an inspector general or employee of an OIG from holding office, or being a candidate for an elective office with the state or any municipality, county, or other political subdivision of the state while serving as an inspector general or an employee of an OIG. The bill also prohibits such individuals from holding office in a political party or political committee.

Access to Agency Records

The bill requires the inspector general and staff to have access to any records, data, and other information of the state agency that the inspector general deems necessary to carry out his or her duties. The inspector general is also required to have access to a building or facility that is owned, operated, or leased by a department, agency, board, or commission, or a property held in trust to the state that the inspector general deems necessary to carry out his or her duties.

The bill authorizes the inspector general, to request information or assistance that may be necessary from a federal, state, or local governmental entity.

Duty to Cooperate

The bill requires every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

Required Statement for Contract/Bid Proposals

Beginning July 1, 2015, the bill requires that each contract, bid, proposal, and application or solicitation for a contract to contain a statement that the corporation, partnership, or person understands and will abide by the duty to cooperate.

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill requires certain local government entities to cooperate with an inspector general and provide specific assistance. However, the bill may be exempt because the fiscal impact will likely be insignificant.

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:

The bill requires, beginning July 1, 2015, that each contract, bid, proposal, and application or solicitation for a contract contain a statement that the entity or individual seeking to contract with the state will comply and cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. The bill requires a national search when hiring an inspector general, which could be more costly than a typical search.

Authorizing inspectors general to obtain outside legal counsel has an indeterminate fiscal impact. It is unknown how often counsel would be obtained and the cost associated with such counsel.

The bill provides that every state officer, employee, agency, special district, board, commission, contractor, and subcontractor must cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. Depending on the nature of the inspection or audit, local government may be required to cooperate and assist an inspector general. As a result, there may be an indeterminate negative fiscal impact on local governments. These costs are expected to be minimal.

VI. Technical Deficiencies:

The bill (lines 290-294) requires that “each contract, bid, proposal, and application or solicitation for a contract shall contain a statement that the corporation, partnership, or person understands and will abide by this section.” This provision might be more appropriately codified in the state’s procurement statutes.

VII. Related Issues:

The bill permits that an agency head or Chief Inspector General may appoint an interim inspector general from current OIG staff. It is unclear if this provision is intended to limit the appointment of an interim inspector general only to current staff or is permissive to allow the appointment of an interim inspector general. If it is intended to limit the pool of available interim appointments, then such provision may create undue hardship on agencies with smaller OIG. The Department of Financial Services notes that there are currently 11 OIGs that have 3 or less employees, including the inspector general, and 4 of those offices are only staffed by the inspector general himself or herself.²⁰ Other agencies also cited this concern.²¹

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.)

Recommended CS/CS by Appropriations Subcommittee on General Government on April 2, 2015:

The committee substitute:

- Clarifies the authorization to issue and serve subpoenas and subpoenas duces tecum only pertain to the Chief Inspector General or his or her designee for agencies under the jurisdiction of the Governor;
- Removes provisions relating to the term of office of an inspector general;
- Limits the prohibition on an inspector general, current officer or employee of an office of inspector general holding or being a candidate for elective office to only apply to elective office with the state, or any municipality, county, or other political subdivision of the state;
- Provides an inspector general’s access to specific buildings or facilities are limited to circumstances in which the inspector general deems such access necessary to carry out his or her duties;
- Authorizes an inspector general to request information or assistance that may be necessary from a state agency or from a federal, state, or local governmental entity;

²⁰ Department of Financial Services legislative bill analysis for HB 371, Feb. 18, 2015 (on file with the Governmental Oversight and Accountability Committee).

²¹ Department of Children and Families legislative bill analysis for HB 371, Jan. 30, 2015 (on file with the Governmental Oversight and Accountability Committee). Department of Revenue legislative bill analysis for HB 371, Feb. 17, 2015, (on file with the Senate Fiscal Policy Committee).

- Removes the terms “licensee” and “applicant for certification of eligibility for a contract or program” from the provision creating a duty of certain entities to cooperate with an inspector general; and
- Requires, beginning July 1, 2015, that each contract, bid, proposal, and application or solicitation for a contract must contain a statement that the corporation, partnership, or person understands and will abide by the requirement to cooperate with the inspector general. The CS clarifies this requirement is prospective.

CS by Governmental Oversight and Accountability on March 23, 2015:

The CS amends definitions of the terms “agency head” and “state agency” contained in s. 20.55(1)(a) and (d), F.S. This change requires the State Board of Administration and the Office of Early Learning to appoint an inspector general.

The initial term of appointment for an inspector general is three years, and subsequent three year terms may be renewed at discretion of agency head. An inspector general may be removed from office for cause by the agency head.

Provides that the inspector general is under the general supervision of the agency head for administrative purposes.

In regards to qualifications, the inspector general:

- Is subject to level 2 background screening;
- Shall have at least one other related professional certification;
- May substitute an advanced degree in law, accounting, public administration, or another relevant field for one year of required experience.

Experience as a local judge is added to the experience category of state and federal court judge.

For related certifications, the area of financial crimes investigator is added.

B. Amendments:

None.