

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 Appropriations Subcommittee on General Government

BILL: PCS/CS/SB 1304 (560970)

INTRODUCER: Appropriations Subcommittee on General Government; Governmental Oversight and Accountability Committee; and Senator Latvala

SUBJECT: Inspectors General

DATE: April 6, 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> </u>	<u> </u>	<u>FP</u>	<u> </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., to require the State Board of Administration and the Office of Early Learning to appoint an inspector general and to mandate additional hiring requirements, employment qualifications, and terms of employment for agency inspectors general. The bill prohibits an inspector general and employees of inspector general from holding elective office and provides additional restrictions for an inspector general and their staff for specified political activities.

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.

The bill provides an effective date July 1, 2015.

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.¹ The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor² and serves as the inspector general for the Executive Office of the Governor.³ The Chief Inspector General is required to:⁴

- 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 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,⁵ including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, requesting records, monitoring contract compliance, and making recommendations for improvements in the actions taken by public-private partnerships to meet performance standards.

¹ Section 14.32(1), F.S.

² *Id.*

³ Section 14.32(4), F.S.

⁴ Section 14.32(2), F.S.

⁵ Section 14.32(3), F.S.

Agency Inspectors General

Duties

Section 20.055, F.S., requires that each state agency⁶ 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.⁷ Each office is responsible for the following:⁸

- Advising in the development of performance measures, standards, and procedures for evaluation of state agency programs.
- Assessing the reliability and validity of information provided by the agency on performance measures and standards.
- Reviewing the actions taken by the state agency to improve program performance and meet program standards and make recommendations for improvement, if necessary.
- Supervising and coordinating audits, investigations, and reviews relating to the programs and 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.
- Keeping the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action.
- Ensuring effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication.
- 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 accountability 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.

Appointment

For state agencies under the jurisdiction of the Governor and Cabinet, the inspector general is appointed by the agency head.⁹ For agencies under the jurisdiction of the Governor, the inspector general is be appointed by the Chief Inspector General.¹⁰ The agency head or Chief Inspector General is required to notify the Governor in writing of their intent to hire the inspector general

⁶ 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.”

⁷ Section 20.055(2), F.S.

⁸ *Id.*

⁹ Section 20.055(3)(a), F.S.

¹⁰ *Id.*

at least seven days prior to an offer of employment.¹¹ Inspectors general shall be appointed without regard to political affiliation.¹²

Removal

Section 20.055(3)(c), F.S., governs removal of inspectors general. 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 under this section. 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 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.

Qualifications

To ensure that state agency audits are performed in accordance with applicable auditing standards, s. 20.055(4), F.S., provides that the inspector general or the director of auditing within the inspector general's office shall possess the following qualifications:

- a) 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 five years experience as an internal auditor, independent postauditor, electronic data processing auditor, accountant, or any combination thereof. The experience shall at a minimum consist of audits of units of government or private business enterprises, operating for profit or not for profit; or
- b) A master's degree in accounting, business administration, or public administration from an accredited college or university and four years of experience as required in paragraph (a); or
- c) A certified public accountant license issued pursuant to ch. 473, F.S., or certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination and four years of experience as required in paragraph (a).

Elected Office/Political Office Restrictions

There are no current restrictions on inspectors general or office of inspector general 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.

¹¹ *Id.*

¹² *Id.*

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.¹³ 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.¹⁴ 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.¹⁵

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.¹⁶ All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.¹⁷

More Duties

The inspector general must develop long-term and annual audit plans based on the findings of periodic risk assessments.¹⁸ The plan, where appropriate, should include post-audit samplings of payments and accounts.¹⁹ 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.²⁰ For state agencies under the Governor, the audit plans shall be submitted to the Governor's Chief Inspector General.²¹ 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.²²

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:²³

¹³ Section 20.055(5), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 20.055(5)(a), F.S.

¹⁷ *Id.*

¹⁸ Section 20.055(5)(i), F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Section 20.055(6), F.S.

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act.²⁴
- 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.²⁵
- 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.²⁶
- 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.²⁷
- 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.²⁸
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.²⁹

Each inspector general must submit an annual report on its activities to the agency head,³⁰ and provide any written complaints about the operations of the inspector general.³¹

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 Governor's jurisdiction, 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 subpoena or subpoena duces tecum, the Chief Inspector General is authorized to petition the circuit court of county where the person has their residence or 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.

²⁴ Section 20.055(6)(a), F.S.

²⁵ Section 20.055(6)(b), F.S.

²⁶ Section 20.055(6)(c), F.S.

²⁷ Section 20.055(6)(d), F.S.

²⁸ Section 20.055(6)(e), F.S.

²⁹ Section 20.055(6)(f), F.S.

³⁰ Section 20.055(7), F.S.

³¹ 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.

Section 2 amends s. 20.055, F.S., to revise definitions of the terms “agency head” and “state agency.” The definition of “agency head” is expanded to include the executive directors of the State Board of Administration (SBA) and Office of Early Learning (OEL). The definition of “state agency” is expanded to include SBA and OEL. 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 in the position of inspector general 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.³²

The bill outlines additional criteria that candidates must meet to be deemed eligible to fill a position as an inspector general. The bill prohibits an elected official from being appointed as inspector general within five 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

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.

³² The Department of Children and Families noted the following concerns regarding appointment of an interim inspector general: “It is unclear as to whether the interim inspector general may be utilized from personnel within another agency’s office of inspector general. If an interim inspector general may only be selected from the agency experiencing the vacancy, small inspector general offices may experience a hardship in making an interim appointment.” See Department of Children and Families legislative bill analysis for related bill, HB 371, dated Jan. 30, 2015, that contains similar language on appointment of interim inspector general. A copy of this analysis is on file with the Governmental Oversight and Accountability Committee.

The Department of Financial Services (DFS) noted the following concerns regarding the national search requirements: “Requiring a search, especially a national search may slow down the hiring process. This may cause . . . issues for those Office of Inspector Generals who are relatively small. Presently there are 11 OIG’s who have three or less positions including the IG. Four of the 11 OIG’s are singularly staffed with only the IG and no other professional employees.” The DFS also noted the following concerns regarding the appointment of interim inspector general: “Presently there are 11 OIG’s who are staffed with three or less positions. The only management position in these offices is the IG. This legislation would effectively leave the IG position vacant for extended periods of time pending a national search.” See DFS legislative bill analysis for related bill, HB 371, dated Feb. 18, 2015, that contains similar language on national search requirements and appointment of interim inspector general. A copy of this analysis is on file with the Governmental Oversight and Accountability Committee.

- The inspector general shall have experience managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or organizations.
- 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.
- Inspector general is subject to level 2 background screening under ch. 435, F.S.
- A candidate for inspector general shall have a four-year degree from an accredited institution of higher learning or have at least five 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.
 - An advanced degree in law, accounting, public administration, or other relevant field may substitute for one year of required experience.

The bill appears to create statutory requirements for the appointment of agency inspectors general. The bill does not provide any time frames or procedures for challenging an appointees' qualifications. If it is determined that an inspector general does not meet these new statutory requirements for appointment, the impact on the validity of audits and investigations overseen by that inspector general is unclear.

Political Office/Party Restrictions

The bill prohibits an inspector general or employee of an office of inspector general 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 office of inspector general. The bill also prohibits the inspector general and employees in the office of inspector general from holding office in a political party or political committee while employed in the office of inspector general.

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 shall 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 if the inspector general deems such access necessary to carry out his or her duties.

The inspector general may also request information or assistance that may be necessary from a state agency or 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 pursuant to this section.

Required Statement for Contract/Bid Proposals

The bill 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 this duty to cooperate.

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

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:

PCS/CS/SB 1304 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 have costs associated.

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.

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:

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 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;
- 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.