

**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 1304  
 INTRODUCER: Senator Latvala  
 SUBJECT: Inspectors General  
 DATE: March 20, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	<b>Pre-meeting</b>
2.			AGG	
3.			FP	

**I. Summary:**

SB 1304 amends s. 14.32, F.S., to authorize the Chief Inspector General or designee to issue and enforce subpoenas under certain circumstances. The bill amends s. 20.055, F.S., to mandate additional hiring requirements, employment qualifications, and terms of employment for agency inspectors general. The bill prohibits an 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 and personnel must be accessible to agency inspectors general during an audit or investigation. The bill authorizes agency inspectors general to administer oaths, compel witness attendance and testimony under oath, and require production of records. The bill requires specified personnel to cooperate with requests of agency inspectors general during investigations, audits, inspections, reviews and hearings.

Additionally, the bill requires certain language be included in contracts, bids, and proposals. State employees, officers and elected officials who violate provisions of bill are subject to loss of employment. The bill specifies that disclosure of certain information to agency inspectors general does not constitute a waiver of attorney-client privilege.

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.<sup>1</sup> The Chief Inspector General is appointed by and serves at the pleasure of the Governor,<sup>2</sup> and serves as the inspector general for the Executive Office of the Governor.<sup>3</sup> The Chief Inspector General is required to:<sup>4</sup>

- 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,<sup>5</sup> 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.

## **Agency Inspectors General**

### ***Duties***

Section 20.055, F.S., requires that each state agency<sup>6</sup> created in the organizational structure of state government have an inspector general office contained within the agency. The office is

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<sup>1</sup> Section 14.32(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 14.32(4), F.S.

<sup>4</sup> Section 14.32(2), F.S.

<sup>5</sup> Section 14.32(3), F.S.

<sup>6</sup> 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."

created to provide a focal point of accountability efforts within the agency.<sup>7</sup> Each office is responsible for the following:<sup>8</sup>

- 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 Cabinet or the Governor and Cabinet, the inspector general is appointed by the agency head.<sup>9</sup> For agencies under the jurisdiction of the Governor, the inspector general is be appointed by the Chief Inspector General.<sup>10</sup> 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 seven days prior to an offer of employment.<sup>11</sup> Inspectors general shall be appointed without regard to political affiliation.<sup>12</sup>

### ***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 Cabinet or the Governor and Cabinet. For agencies under the jurisdiction of the Governor, the inspector general may only

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<sup>7</sup> Section 20.055(2), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 20.055(3)(a), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

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 the 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 chapter 473 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.

### ***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.<sup>13</sup> The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his

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<sup>13</sup> Section 20.055(5), F.S.

or her findings.<sup>14</sup> 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.<sup>15</sup>

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

### ***More Duties***

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

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:<sup>23</sup>

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act.<sup>24</sup>
- 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.<sup>25</sup>
- 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.<sup>26</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 20.055(5)(a), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 20.055(5)(i), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Section 20.055(6), F.S.

<sup>24</sup> Section 20.055(6)(a), F.S.

<sup>25</sup> Section 20.055(6)(b), F.S.

<sup>26</sup> Section 20.055(6)(c), F.S.

- 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.<sup>27</sup>
- 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.<sup>28</sup>
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.<sup>29</sup>

Each inspector general must submit a yearly report on its activities to the agency head,<sup>30</sup> and provide any written complaints about the operations of the inspector general.<sup>31</sup>

### 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 issue and serve subpoenas to compel attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium.

It is not clear if the meaning of "designee" applies only to staff of the Chief Inspector General or if it also applies to staff of agency inspectors general.

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.

**Section 2** amends s. 20.055, F.S., to require 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 shall 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.

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<sup>27</sup> Section 20.055(6)(d), F.S.

<sup>28</sup> Section 20.055(6)(e), F.S.

<sup>29</sup> Section 20.055(6)(f), F.S.

<sup>30</sup> Section 20.055(7), F.S.

<sup>31</sup> 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.

The Department of Children and Families noted the following concerns regarding appointment of an interim inspector general:<sup>32</sup>

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.

The Department of Financial Services (DFS) noted the following concerns regarding the national search requirements:<sup>33</sup>

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.

DFS noted the following concerns regarding the appointment of interim inspector general:<sup>34</sup>

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.

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. Employees of the office of inspector general that have served in the office for four years may be considered for appointment as inspector general.

The bill requires that the inspector general's initial appointment is for a term of five years, and the inspector general's term may be renewed for subsequent five-year terms.

The bill authorizes an office of inspector general to include, but not be limited to, a division of investigations, a division of audit, or other divisions as appropriate. Also, the Chief Inspector General may hire or retain legal counsel.

### ***Qualifications***

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

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<sup>32</sup> 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.

<sup>33</sup> 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.

<sup>34</sup> *Id.*

- An inspector general possess at appointment or obtain within the first year after appointment a certification from the Association of Inspectors General as a certified inspector general.
- A well-qualified inspector general shall have two or more other professional certifications, such as certified inspector general investigator, certified inspector general auditor, certified public accountant, certified internal auditor, certified governmental financial manager, or certified fraud examiner, or be a licensed attorney.
- The inspector general shall have special training and experience in the administration and managing of programs for prevention, examination, investigation, audit, detection, elimination, and prosecution of fraud, corruption, waste, mismanagement, or misconduct in the operation of government or organizations.
- The inspector general shall be selected on the basis of integrity, leadership capability, and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, criminal justice administration, or other closely related field.
- The inspector general should have demonstrated knowledge, skills, abilities, and experience in conducting audits, investigations, inspections, and performance reviews.
- A qualified 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.
  - Federal or state court judge.
  - Licensed attorney with expertise in the areas of audit and investigation of fraud, mismanagement, waste, corruption, and abuse of power.
  - 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.
- For agencies under jurisdiction of the Governor, the Chief Inspector General may consider other credentials, certifications, education and experience.
- A qualified candidate for inspector general must have the following additional qualifications:
  - Managed and completed complex investigations involving allegations of fraud, waste, abuse, illegal acts, theft, public corruption, deception and conspiracy;
  - Demonstrated the ability to effectively collaborate with local, state, and federal law enforcement agencies and the judiciary; or
  - An advanced degree in law, accounting, public administration, or other relevant field.

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, it is unclear of the impact on the validity of audits and investigations overseen by that inspector general.

Also, the use of the terms “well-qualified” and “qualified” may create ambiguity in defining minimum qualifications for inspectors general, as these terms are used for certain areas of qualification.



***Political Office/Party Restrictions***

The bill prohibits an inspector general from holding office, or being a candidate for an elective office while serving as an 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, participating in a political campaign of any candidate for public office, and making a campaign contribution or campaign endorsement while employed in the office of inspector general.

***Access to Agency Records and Staff***

The bill requires the inspector general and staff have access to all records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence, audits, reviews, papers, books, documents, computer hard drives, e-mails, instant messages, recommendations, and any other material of the agency, agency head, or of an individual, partnership, corporation, or organization related to any financial or official function of state government that the inspector general deems necessary to facilitate an investigation, audit, inspection, or performance review.

The phrase “an individual, partnership, corporation, or organization related to any financial or official function of state government” is very broad and may create ambiguity on its meaning.

The inspector general shall have access to all employees of the agency, and at all times, have access to buildings or facilities that are owned, operated, or leased by a department, agency, board, or commission, or a property held in trust to the state.

For purposes of an investigation, audit, inspection, or performance review, the bill authorizes the inspector general and staff designated by the inspector general to:

- Administer oaths and affirmations;
- Compel witness attendance and testimony under oath;
- Take evidence, and
- Require the production of any records that the inspector general deems relevant or material to an investigation, audit, inspection, or performance review.

***Access to Contractor Records***

The bill requires the inspector general to have access to all records; reports; audits; reviews; papers; books; documents; computer hard drives; e-mails; instant messages; recommendations; correspondence, including information relative to the purchase of supplies and services or anticipated purchase of supplies and services from any contractor by an agency, board, or commission; and other data and material that is maintained by or available to the agency, board, or commission that in any way relates to the programs and operations with respect to which the inspector general has duties and responsibilities.

***Request for Assistance from Other Agencies***

The bill authorizes the inspector general to request information, cooperation, and assistance from an agency, special district, board, or commission. Each person in charge of an agency, special district, board, or commission must furnish the inspector general with such information, cooperation, and assistance upon receipt of such request.

The bill mandates that the inspector general shall have direct and prompt access to the head of any agency, special district, board, or commission when necessary when pertaining to the performance of their duties.

The bill authorizes the inspector general to require the attendance and testimony under oath of persons and the production of all records, reports, audits, inspections, reviews, papers, books, documents, computer hard drives, e-mails, instant messages, recommendations, correspondence, and other data and material relevant to a matter under audit, investigation, inspection, or performance review.

The bill provides that the summons must be served in the same manner as a summons for the production of documents in civil cases issued on behalf of the state. Failure to appear in response to a subpoena, answer a question, or produce information requested, or to knowingly give false testimony during an investigation, audit, inspection, or review by the inspector general is considered contempt of court and shall subject a respondent to loss of employment with the agency, special district, board, or commission.

#### ***Duty to Cooperate***

The bill requires every state officer, employee, agency, special district, board, commission, contractor, subcontractor, licensee, and applicant for certification of eligibility for a contract or program, to cooperate with the inspector general in any investigation, audit, inspection, performance review, or hearing pursuant to this section.

#### ***Required Statement for Contract/Bid Proposals***

The bill 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.

#### ***Loss of Employment***

The bill provides that an employee, appointed officer, or elected official who violates this section is subject to loss of employment.

#### ***Attorney-client Privilege Waiver***

The bill provides that disclosure to an inspector general of communications between an agency, special district, board, or commission and an attorney representing the agency, special district, board, or commission does not constitute a waiver of attorney-client privilege.

**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.

**D. Other Constitutional Issues:**

Section 2 of the bill contains restrictions related to political speech (Lines 187-199). Such restrictions may violate a person's constitutional rights to political speech (campaign contributions and endorsements) and association (political activities).

The bill (lines 303-305) implies that an inspector general has the power to suspend officers. Only the Governor has the authority to suspend any state officer not subject to impeachment.<sup>35</sup>

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Indeterminate.

**C. Government Sector Impact:**

To the extent that Section 2 of bill (Lines 92-94) creates a division within the agency offices of inspector general, there may be a fiscal impact based on the costs of additional benefits afforded to personnel assigned to those particular organizational structures.

**VI. Technical Deficiencies:**

The bill (Lines 94-95) amends s. 20.055, F.S., to authorize the Chief Inspector General to hire or retain legal counsel. This provision is contained in the section of law for agency inspectors general. This language should be moved to s. 14.32, F.S.

The bill (lines 253-270 and 277-294) appears to provide subpoena like authority to inspector general and staff designated by inspector general. It may be beneficial to revise this provision to specifically include subpoena authority, along with circuit court enforcement, as contained in the bill (Lines 26-34) for the Chief Inspector General.

The bill (lines 300-303) requires that each contract, bid, proposal, and application or solicitation for a contract shall contain a statement that the corporation, partnership, or person understands

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<sup>35</sup> Fla. Const. art. IV, s. 7.

and will abide by this section. This provision may be more appropriately codified with the state procurement statutes.

## **VII. Related Issues:**

Section 2 of bill (Lines 92-94) creates a division within the agency offices of inspector general. The term “division” may be in conflict with other sections of ch. 20, F.S., referencing organizational structures of state agencies. Since the office of inspector general is a component of the department, the subcomponent of the office should be a bureau. If the use of “division” is the intent, there may be a fiscal impact based on personnel benefits assigned to particular organizational structures. If this language remains in the bill, it should be moved to s. 20.055(2), F.S.

The bill (Lines 243-244) authorizes an inspector general to have access to all employees of the agency. It may be beneficial to specify that an inspector general also has access to contractors and employees of contractors working for the agency.

## **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.)

None.

### **B. Amendments:**

None.