

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 371 Agency Inspectors General

SPONSOR(S): State Affairs Committee; Appropriations Committee; Government Operations Subcommittee; Raulerson

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1304

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 1 N, As CS	Harrington	Williamson
2) Appropriations Committee	20 Y, 5 N, As CS	Kramer	Leznoff
3) State Affairs Committee	10 Y, 4 N, As CS	Harrington	Camechis

SUMMARY ANALYSIS

The Office of Inspector General (OIG) is established in each agency to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Inspectors general under the jurisdiction of the Cabinet or the Governor and Cabinet are appointed by the agency head and may only be removed by the agency head. Inspectors general under the jurisdiction of the Governor are appointed by the Chief Inspector General (CIG) and may only be removed by the CIG. The CIG within the Executive Office of the Governor provides oversight and monitors the activities of the agency inspectors general under the Governor's jurisdiction.

The bill amends provisions related to inspector generals and the CIG. Specifically, the bill:

- Requires a national search for an inspector general to be initiated within 60 days after a vacancy or anticipated vacancy of a position of inspector general.
- Prohibits a former or current elected official from being appointed as an inspector general within five years after the end of his or her term of office, but provides exceptions.
- Adds additional qualifications for the position of inspector general for agencies under the jurisdiction of the Governor, which include certification, education, and experience requirements.
- Prohibits an inspector general, or an officer or employee of an OIG, from holding or running for elective office with the state, county or other political subdivision or holding office in a political party or committee.
- Requires other agency, district, or commission personnel to cooperate with an inspector general.
- Beginning July 1, 2015, requires a statement in each contract or program for every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to require cooperation with the inspector general.
- Authorizes the CIG to hire or retain legal counsel.
- Authorizes the CIG to issue and enforce subpoenas relating to agencies under the jurisdiction of the Governor.

The bill may have a fiscal impact on state and local governments, though costs are expected to be minimal.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Inspectors General

Authorized under s. 20.055, F.S., the Office of Inspector General (OIG) is established in each state agency¹ to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Section 14.32, F.S., creates the Office of the Chief Inspector General (CIG) within the Executive Office of the Governor. The CIG monitors the activities of the agency inspectors general under the Governor's jurisdiction.

Each agency OIG is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the 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 agency to improve agency performance, and making recommendations, if necessary;
- 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 the 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, abuse, and deficiencies to the agency head,² or the CIG for agency's under the jurisdiction of the Governor, and recommending corrective action concerning fraud, abuses, and deficiencies, and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.³

Inspectors general are appointed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general is appointed by the CIG.⁴ The agency head or the CIG must notify the Governor in writing, at least seven days prior to an offer of employment, of the intention to hire an inspector general.⁵

¹ Section 20.055(1)(d), F.S., defines "state agency" as each department created pursuant to chapter 20, F.S., and also includes 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 court system.

² Section 20.055(1)(a), F.S., defines "agency head" as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, and the Chief Justice of the State Supreme Court.

³ Section 20.055(2), F.S.

⁴ Section 20.055(3)(a), F.S.

⁵ *Id.*

Each inspector general must report to and be under the general supervision of the agency head and is not subject to supervision by any other employee of the state agency.⁶ For state agencies under the jurisdiction of the Governor, the inspector general must be under the general supervision of the agency head, report to the CIG, and may hire and remove staff within the OIG in consultation with the CIG but independently of the state agency.⁷

Inspectors general may be removed only by the agency head. For state agencies under the jurisdiction of the Governor, the inspector general only may be removed by the CIG for cause.⁸ The CIG must notify the Governor in writing of his or her intention to remove the inspector general at least 21 days before the removal. For the other agencies, the agency head must notify the Governor in writing of the intention to terminate the inspector general, at least 21 days prior to the removal.⁹ If the inspector general disagrees with the removal, the inspector general may present written objections to the Governor within the 21-day period.¹⁰

Auditing Standards

Inspectors general must possess minimum education and experience qualifications, and the investigations they conduct must adhere to specific internal auditing standards.¹¹ To ensure agency audits are performed in accordance with applicable auditing standards, the inspector general or the director of auditing within the OIG must possess the following qualifications:¹²

- A bachelor's degree from an accredited college or university with a major in accounting, or with a major in business which includes five courses in accounting, and five years of experience as an internal auditor or independent postauditor, electronic data processing auditor, accountant, or any combination thereof. The experience must at a minimum consist of audits of units of government or private business enterprises, operating for profit or not for profit;
- A master's degree in accounting, business administration, or public administration from an accredited college or university and four 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 four years of experience.

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. The performance of the audit must 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.¹⁴

Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing as published by the Institute of Internal Auditors, Inc., or where appropriate, in accordance with generally accepted governmental auditing standards. All audit reports issued by internal audit staff must include a statement that the audit was conducted pursuant to the appropriate standards.¹⁵

⁶ Section 20.055(3)(b), F.S.

⁷ *Id.*

⁸ Section 20.055(3)(c), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See s. 20.055(4), F.S.*

¹² Section 20.055(4), F.S.

¹³ Section 20.055(5), F.S.

¹⁴ *Id.*

¹⁵ Section 20.055(5)(a), F.S.

Audit work papers and reports are considered public records to the extent they do not include information that has been made confidential and exempt from the provisions of s. 119.07(1), F.S., or contain information protected under the Whistle-blower's Act.¹⁶

The inspector general must have access to any records, data, and other information of the state agency he or she deems necessary to carry out his or her duties. The inspector general is authorized to request such information or assistance as may be necessary from the state agency or from any federal, state, or local governmental entity.¹⁷

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 preliminary findings. Such response, and the inspector general's rebuttal to the response, must be included in the final audit report.¹⁸ Final reports are submitted to the agency head and the Auditor General and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.¹⁹

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.²⁰

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 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.²¹

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. For state agencies under the Governor, the audit plans are submitted to the CIG. The plan is 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

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;

¹⁶ Section 20.055(5)(b), F.S. Sections 112.3187 – 112.31895, F.S., may be cited as the "Whistle-blower's Act." According to the act, it is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of government office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee. Section 112.3187(2), F.S.

¹⁷ Section 20.055(5)(c), F.S.

¹⁸ Section 20.055(5)(d), F.S.

¹⁹ Section 20.055(5)(f), F.S.

²⁰ Section 20.055(5)(g), F.S.

²¹ Section 20.055(5)(h), F.S.

²² Section 20.055(5)(i), F.S.

²³ Section 20.055(6), F.S.

- 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; and
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.

Annually, each inspector general must submit a report to the agency head on its activities. For agencies under the jurisdiction of the Governor, the inspector general provides the report to the CIG.²⁴

Effect of the Proposed Changes

Agency Inspector Generals

Definition of "State Agency"

The bill adds the Office of Early Learning (Office) to the definition of "state agency" within s. 20.055, F.S. The bill also adds the executive director of the Office to the definition of "agency head." As such, the Office must establish an OIG and comply with the requirements of s. 20.055, F.S.

Vacancies in Position

The bill provides that within 60 days after a vacancy or anticipated vacancy in the position of inspector general, the agency head or, for agencies under the jurisdiction of the Governor, the CIG, must initiate a national search for an inspector general and must set the salary of the inspector general. In the event of a vacancy, an interim inspector general may be appointed until a successor inspector general is appointed.

Prohibitions

The bill provides that a former or current elected official may not be appointed inspector general within five years after the end of such individual's period of service. The restriction does not prohibit the reappointment of a current inspector general.

The bill prohibits the inspector general from holding, or being a candidate for, an elective office with the state or any municipality or political subdivision of the state while inspector general, and prohibits a current officer or employee of an OIG from holding, or being a candidate for, such an elected office. The inspector general may not hold office in a political party or political committee. In addition, an employee of an OIG may not hold office in a political party or political committee while employed in the OIG.

Requirements

The bill creates additional requirements for an inspector general within an agency under the jurisdiction of the Governor. Upon appointment the inspector general must possess, or must obtain within the first year after appointment, a certification from the Association of Inspectors General as a certified inspector general. The bill provides that an inspector general must have one or more other professional certifications, such as certified inspector general investigator, certified inspector general auditor,

²⁴ Section 20.055(7), F.S.
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certified public accountant, certified internal auditor, certified governmental financial manager, certified fraud examiner, certified financial crimes investigator or other related certification, or be a licensed attorney.

For agencies under the jurisdiction of the Governor, the inspector general must be selected without regard to political affiliation and 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 is subject to a level two background screening. In addition, the inspector general must 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;
- Supervisory experience in an OIG or investigative public agency similar to an OIG;
- Local, state, or federal law enforcement officer;
- Local, state, or federal court judge;
- Senior-level auditor or comptroller;
- The administration and management of complex audits and investigations; or
- 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.

Audits and Investigations

The bill provides that it is the duty of every state officer, employee, agency, special district, board, commission, contractor and subcontractor to cooperate with the inspector general. Beginning July 1, 2015, 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 requirement.

Chief Inspector General

The bill authorizes the CIG to hire or retain legal counsel. The bill authorizes the CIG to issue and enforce subpoenas under certain circumstances. Specifically, the bill authorizes the CIG to issue and serve subpoenas and subpoenas duces tecum for agencies under the jurisdiction of the Governor to compel the attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium. The bill also provides that the CIG may require or permit a person to file a statement in writing, under oath or otherwise, as to all facts and circumstances concerning the matter to be audited, examined, or investigated. In the event of noncompliance with a subpoena, the CIG may petition the circuit court of the county in which the person subpoenaed resides or has his or her principal place of business for an order requiring the subpoenaed person to appear and testify and to produce documents, reports, answers, records, accounts, or other data as specified in the subpoena. Currently, the CIG does not have the authority to issue subpoenas.

B. SECTION DIRECTORY:

Section 1. amends s. 20.055, F.S., providing additional hiring requirements, employment qualifications, for inspectors general and staff; establishing the duty of specified persons and entities with respect to cooperation with an inspector general's official duties; requiring contracts and other specified documents to contain a statement regarding compliance with an inspector general's official duties.

Section 2. amends s. 14.32, F.S., authorizing the CIG to retain legal counsel and issue and enforce subpoenas under certain circumstances.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

State Expenditure Impact

Requiring a national search for each vacancy in an agency inspector general position may slow down the hiring of inspector generals. Such a search also may have associated costs with advertising and interviewing applicants outside of the geographic locale. Requiring additional training requirements may have a fiscal impact on the agency; specialized training will have associated travel and course registration costs. These costs are expected to be minimal.

The bill provides that the CIG may hire or retain legal counsel, which will have a negative fiscal impact on the Office of the CIG.

The bill requires the Office of Early Learning to have an inspector general. The Office currently has an inspector general position so this requirement will not have a fiscal impact.

Local Government Expenditure Impact

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 governments 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill requires certain local governmental entities to cooperate with an inspector general and provide specified assistance. However, an exemption may apply as the fiscal impact will likely be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2015, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The committee substitute:

- Adds the State Board of Administration and Office of Early Learning to the definition of “state agency” for purposes of requiring the establishment of an OIG within each entity;
- Reduces the initial term, and each subsequent term, of an inspector general to three years, rather than five years;
- Removes the authority for an inspector general to create divisions within the OIG;
- Clarifies that the new education and experience requirements only pertain to an inspector general in an agency under the jurisdiction of the Governor; and
- Deletes the prohibition of participating in a political campaign or making a political contribution or endorsement.

On March 31, 2015, the Appropriations Committee adopted two amendments and reported the bill favorably with committee substitute. The first amendment:

- Removed language from the bill relating to the term of office of an inspector general;
- Removed 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;
- Limited the provision requiring that an inspector general have access to a building or facility that is owned, operated or leased by a department, agency, board or commission to circumstances in which the access is necessary for the inspector general to carry out his or her duties;
- Limited the prohibition on an inspector general holding or being an candidate for elective office to only apply to elective office with the state, or any municipality, county, or other political subdivision of the state; and
- Clarified that the requirement 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 is prospective.

The second amendment provided that the authority of the Chief Inspector General to issue or serve subpoenas and subpoenas duces tecum relates only to agencies under the jurisdiction of the Governor.

On April 8, 2015, the State Affairs Committee adopted two amendments and reported the bill favorably with committee substitute. The committee substitute:

- Removes the State Board of Administration (SBA) from the definition of “state agency” for purposes of requiring the establishment of an OIG in the SBA.
- Removes the provision that required the inspector general to have access to a building or facility that is owned, operated, or leased by a department, agency, board, or commission.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.