

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1285 Pub. Rec./Chief Inspector General and Agency Inspectors General  
**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee; Raulerson  
**TIED BILLS:** CS/CS/HB 1283 **IDEN./SIM. BILLS:** CS/SB 1480

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N, As CS	Moore	Harrington
2) Public Integrity & Ethics Committee	16 Y, 0 N	Mitz	Rubottom
3) Government Accountability Committee	23 Y, 0 N	Moore	Williamson

### SUMMARY ANALYSIS

Current law establishes an Office of Inspector General in each state agency to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. The Office of the Chief Inspector General (CIG), established within the Executive Office of the Governor, is responsible for monitoring the activities of the agency inspectors general under the Governor's jurisdiction. The CIG and state agency inspectors general are required to conduct audits and investigations of the state agencies under their purview.

The bill creates a public record exemption for any audit or investigative work papers, records, reports, reviews, inquiries, or other documentation obtained or created during or in relation to an active audit or investigation conducted by the CIG or an agency inspector general. Such information is confidential and exempt from public record requirements until the audit or investigation is no longer active. When the audit or investigation is no longer active, the information is subject to disclosure to the extent that it does not include information that has been made confidential and exempt by another exemption.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill provides that it becomes effective on the same date that CS/HB 1283 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Art. I, s. 24(a). The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.<sup>3</sup>

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>4</sup>

##### Inspectors General

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency<sup>5</sup> 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 and is required to do the following:

- Initiate, supervise, and coordinate investigations, recommend policies, and carry out other activities designed to deter, detect, prevent, and eradicate fraud, waste, abuse, mismanagement, and misconduct in government;
- Investigate, upon receipt of a complaint or for cause, any administrative action of any agency the administration of which is under the direct supervision of the Governor;

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 119.15(3), F.S.

<sup>5</sup> 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, the Office of Early Learning, and the state courts system.

- Request such assistance and information as may be necessary for the performance of the CIG's duties;
- Examine the records and reports of any agency the administration of which is 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 to receive complaints and information concerning the possible violation of law or administrative rules, mismanagement, fraud, waste, abuse of authority, malfeasance, or a substantial or specific danger to the health, welfare, or safety of the public;
- Report expeditiously to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are recognizable 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; and
- Conduct special investigations and management reviews at the request of the Governor.<sup>6</sup>

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 programs and 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,<sup>7</sup> or the CIG for agencies under the jurisdiction of the Governor; 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.<sup>8</sup>

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<sup>6</sup> Section 14.32(2), F.S.

<sup>7</sup> 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, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.

<sup>8</sup> Section 20.055(2), F.S.

In carrying out his or her auditing duties and responsibilities, each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings.<sup>9</sup>

Audit work papers and reports are considered public records to the extent that they do not include information that has been made confidential and exempt from the provisions of s. 119.07(1), F.S.<sup>10</sup> However, when the inspector general or a member of the staff receives a complaint or information that is protected by the Whistle-blower's Act,<sup>11</sup> the name or identity of the individual providing the information may not be disclosed to anyone else without the written consent of the individual, unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation.<sup>12</sup>

The inspector general and his or her staff must have access to any records, data, and other information of the state agency that 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.<sup>13</sup>

In carrying out his or her investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate;
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law;
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information;
- At the conclusion of an investigation 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.<sup>14</sup>

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<sup>9</sup> Section 20.055(6), F.S.

<sup>10</sup> Section 20.055(6)(b), F.S.

<sup>11</sup> 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.

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

<sup>13</sup> Section 20.055(6)(c), F.S.

<sup>14</sup> Section 20.055(7), F.S. The Whistle-blower's Act provides a public record exemption for all information received by the CIG or an agency inspector general and prohibits the disclosure of the name or identity of individuals protected under the act without their

### House Bill 1283 (2017)

House Bill 1283, which is linked to this bill, makes various changes to the laws governing the CIG and agency inspectors general, including:

- Adding additional qualifications that the CIG or an agency inspector general must meet;
- Specifying that the CIG must have open and direct access to the Governor at all times;
- Requiring the State Board of Administration to have an inspector general;
- Authorizing inspectors general to take and record testimony and statements during an investigation or review;
- Classifying OIG staff as Select Exempt Service and agency inspectors general as Senior Management Service; and
- Requiring the CIG and agency inspectors general to include certain budget information in their annual reports.

### **Effect of Proposed Changes**

The bill creates a public record exemption for any audit or investigative work papers, records, reports, reviews, inquiries, or other documentation obtained or created during or in relation to an active audit or investigation conducted by the CIG pursuant to s. 14.32, F.S., or an agency inspector general pursuant to s. 20.055, F.S. Such information is confidential and exempt<sup>15</sup> from public record requirements until the audit or investigation is no longer active. When the audit or investigation is no longer active, the information is subject to disclosure to the extent that it does not include information that has been made confidential and exempt by another exemption.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect documents obtained or created during an active audit or investigation because the public release of such information could jeopardize the overall integrity of the audit or investigation and any subsequent findings and recommendations issued by the CIG or an agency inspector general.

The bill provides that it becomes effective on the same date that CS/HB 1283 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

### **B. SECTION DIRECTORY:**

Section 1. amends s. 14.32, F.S., relating to the Office of Chief Inspector General.

Section 2. amends s. 20.055, F.S., relating to agency inspectors general.

Section 3. provides a public necessity statement.

Section 4. provides a contingent effective date.

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written consent unless the disclosure is unavoidable and absolutely necessary during the course of an audit, evaluation, or investigation. Section 112.3188(1)-(2), F.S.

<sup>15</sup> There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att’y Gen. Fla. 85-692 (1985).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have an impact on state government revenues.

#### 2. Expenditures:

The bill could have a minimal fiscal impact on state agencies because agency staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have an impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal government.

#### 2. Other:

##### Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

##### Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

##### Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for any audit or investigative work papers, records, reports, reviews, inquiries, or other documentation obtained or created during or in relation to an active audit

or investigation conducted by the CIG pursuant to s. 14.32, F.S., or an agency inspector general pursuant to s. 20.055, F.S.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2017, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Required the information related to an audit or investigation to become subject to disclosure when the audit or investigation is no longer active, rather than when the audit or investigation is complete or a final report is issued; and
- Clarified that information related to an audit or investigation is subject to disclosure unless it has been made confidential and exempt by another public record exemption.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.