

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 1478

INTRODUCER: Senator Baxley

SUBJECT: Inspectors General and Auditors

DATE: April 14, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 1478 requires the Chief Inspector General to meet the same educational and experience qualifications required of agency inspector generals. The bill provides that the appointment of the Chief Inspector General may be terminated at any time by a majority vote of both houses of the Legislature. The Chief Inspector General is also required to prepare an annual report that summarizes activities and includes certain budget information provided by agency inspector general reports.

The bill requires the State Board of Administration to appoint an inspector general who must perform the duties and responsibilities required of agency inspector generals.

Additionally, the bill adds experience in forensic auditing to the list of qualifications that must be considered in the selection of an inspector general. The bill also adds certified fraud examiner as a type of experience that an inspector general may have in order to meet the minimum experience requirements.

Agency inspector generals must provide direction for, supervise and coordinate forensic audits, and must include certain budget information in their annual reports.

The bill specifies that certain employees of an office of inspector general and the Department of Financial Services are included in the Selected Exempt Service, and an agency inspector general is included in the Senior Management Service.

The bill provides an effective date of July 1, 2017.

## II. Present Situation:

### Chief Inspector General

Section 14.32, F.S., creates the Office of Chief Inspector General in the Executive Office of the Governor. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.<sup>1</sup> The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor and serves as the inspector general for the Executive Office of the Governor.<sup>2</sup> Some of the duties of the Chief Inspector General include:

- Initiating investigations, recommending policies, and carrying out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government;
- Investigating and examining records of any agency under the direct supervision of the Governor, and coordinate complaint-handling activities with the agencies;
- Coordinating the activities of the Whistle-blower's Act<sup>3</sup> and maintaining the whistle-blower's hotline;
- Acting as a liaison and monitoring the activities of the inspectors general in the agencies under the Governor's jurisdiction; and
- Conducting special investigations and management reviews at the request of the Governor.<sup>4</sup>

The Chief Inspector General also has various duties relating to public-private partnerships, including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, and monitoring contract compliance.<sup>5</sup>

### Agency Inspectors General

#### *Duties*

Section 20.055, F.S., requires each state agency<sup>6</sup> of state government to have an Office of Inspector General (OIG). The OIG is created to provide a focal point of accountability efforts within the agency.<sup>7</sup> Each agency inspector general is responsible for the following:<sup>8</sup>

- 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;

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

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

<sup>3</sup> The Whistle-blower's Act can be found in ss. 112.3187-112.31895, 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, the Office of Early Learning, and the state courts system."

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

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

- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and management reviews relating to the programs and operations of the 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;
- Informing and recommending corrective action to the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General about fraud, abuses, deficiencies relating to programs and operations administered or financed by the state agency, and reporting on progress made in implementing corrective action;
- Ensuring effective coordination and cooperation 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.

In carrying out the investigative duties and responsibilities, the inspector general initiates, conducts, supervises, and coordinates investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.<sup>9</sup>

Each inspector general must submit an annual report on its activities to the agency head,<sup>10</sup> and provide any written complaints about the operations of the inspector general.<sup>11</sup> Audit plans and reports are submitted to the Auditor General.<sup>12</sup>

### *Qualifications*

Inspectors general must possess minimum educational and experience qualifications, and the investigations they conduct must adhere to specific internal auditing standards.<sup>13</sup> 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:

- A bachelor's degree from an accredited college or university with a major in accounting, or with a major in business that 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; or

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<sup>9</sup> Section 20.055(7), F.S.

<sup>10</sup> Section 20.055(8), F.S.

<sup>11</sup> Section 20.055(9), F.S. For agencies under the jurisdiction of the Governor, the inspector general must provide the complaint to the Chief Inspector General.

<sup>12</sup> Section 20.055(6)(f)-(i), F.S.

<sup>13</sup> See s. 20.055(4), F.S.

- 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 licensed pursuant to Chapter 473, F.S., or certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and four years of experience.<sup>14</sup>

For agencies under the jurisdiction of the Governor, the inspector general must 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. The inspector general must also 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 an 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.
- Managing programs for prevention, examination, detection, or elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or other organizations.<sup>15</sup>

### ***Appointment***

Section 20.055(3)(a), F.S., governs appointment of inspector generals. For state agencies under the jurisdiction of the Governor and Cabinet, the inspector general is appointed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general is appointed by the Chief Inspector General. The agency head or Chief Inspector General is required to notify the Governor in writing of their intent to hire the inspector general at least 7 days prior to an offer of employment. Inspectors general are appointed without regard to political affiliation.<sup>16</sup>

### ***Removal***

Section 20.055(3)(c), F.S., governs removal of inspector generals. For agencies under the jurisdiction of the Governor and Cabinet, inspectors general may be removed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the Chief Inspector General for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties. At least 21 days before removal, the Chief Inspector General must notify the Governor in writing of his or her intention to remove an inspector general. For state agencies under the jurisdiction of the Governor and Cabinet, the agency head shall notify the Governor and Cabinet in writing of his or her intention to remove the inspector general at least 21 days before the 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.

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<sup>14</sup> Section 20.055(4)(a), F.S.

<sup>15</sup> Section 20.055(4)(b), F.S.

<sup>16</sup> Section 20.055(3)(a), 1., F.S.

### ***Internal Audits***

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

### ***Annual Reports***

By September 30 of each year, each inspector general is required to prepare an annual report summarizing the activities of the OIG during the immediately preceding fiscal year.<sup>20</sup> However, the inspector general of the Florida Housing Finance Corporation is required to prepare the report within 90 days after the end of the fiscal year.<sup>21</sup> The report must be provided to the agency head or, for state agencies under the jurisdiction of the Governor, to the CIG.<sup>22</sup> The reports must include:

- A description of activities relating to the development, assessment, and validation of performance measures;
- A description of significant abuses and deficiencies relating to the administration of programs and operations of the agency disclosed by investigations, audits, reviews, or other activities during the reporting period;
- A description of the recommendations for corrective action made by the inspector general during the reporting period with respect to significant problems, abuses, or deficiencies identified;
- The identification of each significant recommendation described in previous annual reports on which corrective action has not been completed; and
- A summary of each audit and investigation completed during the reporting period.<sup>23</sup>

### **State Board of Administration**

The State Board of Administration (Board) was created by Art. IV, s. 4(e) of the Florida Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The Board derives its powers to oversee state funds from Art. XII, s. 9 of the Florida Constitution and ch. 215, F.S.

The Board has oversight over the Florida Retirement System (FRS) pension plan and the FRS investment plan. The pension plan is a defined benefit plan and the investment plan is a defined contribution plan that employees may choose in lieu of the pension plan. The Board also manages over 30 other investment portfolios, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Prepaid College Plan, as well as other state mandated

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<sup>17</sup> Section 20.055(6), F.S.

<sup>18</sup> *Id.*

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

<sup>20</sup> Section 20.055(8)(a), F.S.

<sup>21</sup> Section 20.055(8)(b), F.S.

<sup>22</sup> Section 20.055(8)(c), F.S.

<sup>23</sup> *Id.*

funds.<sup>24</sup> Total assets under management are approximately \$188 billion, as of March 1, 2017, including approximately \$148 billion for the FRS.<sup>25</sup>

Section 215.441, F.S., requires the appointment of an Executive Director, subject to the approval by a majority vote of the Board, as well as the Governor's favorable vote. The Executive Director must, at a minimum, possess substantial experience, knowledge and expertise in the oversight of investment portfolios and must meet any other requirements determined by the Board to be necessary to the overall management and investment of funds.<sup>26</sup>

The Board is required to have an Audit Committee, which serves as an independent and objective party to monitor processes for financial reporting, internal controls and risk assessment, audit processes, and compliance with laws, rules, and regulations.<sup>27</sup> The committee has the responsibility to direct the efforts of the Board's independent external auditors and the Board's internal audit staff. The committee meets at least quarterly, and reports to the Board and Executive Director.<sup>28</sup>

The Board has an independent Office of Internal Audit, established by internal policy. The Office of Internal Audit is headed by the Chief Audit Executive who reports functionally to the Audit Committee and administratively to the Executive Director of the Board.<sup>29</sup>

Additionally, the Board has a Risk Management and Compliance Unit, led by a Chief Risk and Compliance Officer.<sup>30</sup> One of the duties of the Risk Management and Compliance Unit is identifying, monitoring, and controlling/mitigating key investment and operational risks.

Further, the Board has an Inspector General<sup>31</sup> who evaluates, investigates and recommends action regarding security, ethical behavior of personnel and contractors, compliance with rules, law, policies, and personnel matters, including allegations of fraud, waste, abuse, malfeasance, mismanagement, or employee misconduct.<sup>32</sup>

### **Employment Classification**

Chapter 110, F.S., establishes the state's personnel management system. The system must provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and must include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits,

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<sup>24</sup> State Board of Administration, *2015-2016 Investment Report*, available at <https://www.sbafla.com/fsb/Portals/FSB/Content/Performance/Annual/2015-16%20AIR.pdf?ver=2017-01-03-121048-220> (last visited on April 10, 2017).

<sup>25</sup> State Board of Administration, *SB 1478 Legislative Bill Analysis* (March 15, 2017)(Copy on file with the Senate Governmental Oversight and Accountability Committee).

<sup>26</sup> Section 215.441, F.S.

<sup>27</sup> Section 215.44(2)(c), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> *See supra*, note 25.

<sup>30</sup> *Id.*

<sup>31</sup> Section 215.44(2)(e), F.S.

<sup>32</sup> *See supra*, note 25.

discipline, discharge, employee performance evaluations, affirmative action, and other related activities.<sup>33</sup>

The Department of Management Services is charged with establishing and maintaining a classification and compensation program addressing Career Service, Selected Exempt Service, and Senior Management Service positions.<sup>34</sup> The classification of a position determines the types of benefits assigned to the position and the compensation and collective bargaining status of the position. A position must be classified as Career Service unless it is specifically exempted by statute.<sup>35</sup>

A Career Service employee who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.<sup>36</sup> Career Service employees that have completed the probationary period are also entitled to a grievance process<sup>37</sup> and have the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.<sup>38</sup>

Selected Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System.<sup>39</sup> Employees in the Selected Exempt Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.<sup>40</sup> The Selected Exempt Service provides greater pay and benefits overall than are provided for Career Service employees, but less pay and benefits overall than are provided for the Senior Management Service.<sup>41</sup>

The Senior Management Service is another separate system of personnel administration for positions in the executive branch whose duties and responsibilities are primarily and essentially policymaking or managerial in nature.<sup>42</sup> Employees in the Senior Management Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.<sup>43</sup> The Senior Management Service provides a salary and benefit plan that provides appropriate incentives for the recruitment and retention of outstanding management personnel and provides for salary increases based on performance.<sup>44</sup>

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<sup>33</sup> Section 110.105(1), F.S.

<sup>34</sup> Section 110.2035(1), F.S.

<sup>35</sup> Section 110.205(1), F.S.

<sup>36</sup> Section 110.227(1), F.S.

<sup>37</sup> Section 110.227(4), F.S.

<sup>38</sup> Section 110.227(5) and (6), F.S.

<sup>39</sup> Section 110.602, F.S.

<sup>40</sup> Section 110.604, F.S.

<sup>41</sup> Section 110.603(2), F.S.

<sup>42</sup> Section 110.402(1), F.S.

<sup>43</sup> Section 110.403(1)(a), F.S.

<sup>44</sup> Section 110.403(1)(c), F.S.

### III. Effect of Proposed Changes:

**Section 1** amends s. 14.32, F.S., and requires the Chief Inspector General to meet the educational and experience qualifications required for agency inspector generals as specified in s. 20.055(4), F.S. The bill provides that the appointment of the Chief Inspector General may be terminated at any time by a majority vote of both houses of the Legislature.

This section also requires the Chief Inspector General to prepare an annual report that summarizes the activities performed in compliance with this provision and includes an aggregate of significant budgetary or administrative changes contained in annual reports prepared by inspectors general for state agencies under the jurisdiction of the Governor pursuant to s. 20.055(8).

**Section 2** amends s. 20.055, F.S., and adds the executive director of the SBA to the definition of “agency head” and adds the State Board of Administration to the definition of “state agency,” thereby requiring the Board to establish an office of inspector general and comply with the requirements of s. 20.055, F.S.

In addition, this section revises the duties and responsibilities of inspector generals, to include providing direction for, supervising and coordinating forensic audits.

Additionally, this section provides that any investigator or auditor employed within the office of an inspector general is included in the Selected Exempt Service as provided in ch. 110, F.S.

Next, the bill adds experience in forensic auditing to the list of qualifications that must be considered in the selection of an inspector general for an agency under the jurisdiction of the Governor. The bill also adds certified fraud examiner as a type of experience that an inspector general may have in order to meet the minimum experience requirements.

Furthermore, the bill adds forensic audits to the list of audits that the inspector general must perform. The annual report that each agency inspector general is required to prepare must include any increase or decrease in expenditures estimating 10 percent or more of the inspector general’s total budget during the preceding state fiscal year and any significant increase or decrease in the number of permanent, temporary, loaned, or grant-funded, full-time equivalent staff within the office of inspector general.

**Section 3** amends s. 20.121, F.S., and specifies that any auditor employed within the Department of Financial Services’ Division of Accounting and Auditing is included in the Selected Exempt Service as provided in ch. 110, F.S.

**Section 4** amends s. 215.44, F.S., and requires the Board of Administration to appoint an inspector general who shall perform the duties and responsibilities required in s. 20.055, F.S. The office of the inspector general must assess and resolve grievances and conduct internal investigations and management reviews. The inspector general, or his or her designee, may enter any place where the Board has an office and may review files, consult with employees, or obtain any information as necessary to conduct an investigation.



**Section 5** provides an effective date of July 1, 2017.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties or municipalities to spend funds, reduce the counties' or municipalities' ability to raise revenue or reduce the percentage of state tax shared with counties or municipalities.

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:

Indeterminate.

C. Government Sector Impact:

The Board noted in its legislative analysis that the functions of the Audit Committee established in s. 215.44(2)(c), F.S., are duplicative of the audit duties of an inspector general under s. 20.055, F.S.<sup>45</sup> Also, the reference to performance measures in s. 20.055, F.S., might imply fund performance and monitoring, and this possibly could cause interference with the function of the Board's Investment Advisory Council established in s. 215.444, F.S., as well as the performance and monitoring done by the Board's Risk Management and Compliance Unit.<sup>46</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>45</sup> See *supra*, note 25.

<sup>46</sup> *Id.*

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 14.32, 20.055, 20.121, and 215.44.

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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