

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 515 Office of Inspector General of the Board of Governors of the State University System

**SPONSOR(S):** Postsecondary Education & Workforce Subcommittee, Silvers

**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Postsecondary Education & Workforce Subcommittee	17 Y, 0 N, As CS	Dixon	Kiner
2) State Affairs Committee	18 Y, 0 N	Wagoner	Williamson
3) Education & Employment Committee			

### SUMMARY ANALYSIS

The Board of Governors (BOG) is responsible for operating, regulating, controlling, and being fully responsible for the management of the State University System. Pursuant to Florida's Constitution, the BOG's management is subject to the powers of the Legislature to appropriate for the expenditure of funds. Like other state agencies, the BOG has an Office of Inspector General charged with promoting accountability, financial integrity and efficiency as required by law. The BOG Office of Inspector General is also charged with detecting fraud and abuse within state universities.

While the Governor's Chief Inspector General may exercise subpoena power on behalf of state agencies under the Governor's control, the BOG Inspector General does not have the authority to exercise subpoena power on behalf of a state university. In 2019, the Florida House of Representatives conducted an investigation into the unauthorized use of appropriated funds for fixed capital outlay projects at the University of Central Florida. Among the investigatory findings was that the BOG's Office of Inspector General lacks resources to exercise the robust investigative role intended by the inspector general statutes and that such resources are essential to holding universities accountable to the BOG. To address the finding, the investigatory report recommended the BOG Inspector General investigate significant complaints or reports of possible waste, fraud and mismanagement and submit investigative findings to the Board of Governors, the Speaker of the House and Senate President. The investigatory report further recommended, if requested by the BOG, consideration be given to authorize the BOG Inspector General to exercise subpoena power on behalf of a state university.

The bill authorizes the BOG Inspector General, or designee, to issue and serve subpoenas and subpoenas duces tecum on behalf of the BOG or a state university to compel the attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium.

In the event of noncompliance with an issued subpoena, the bill authorizes the BOG Inspector General to 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.

The bill also provides for the BOG Inspector General to require or allow a person to file a statement, in writing, under oath, as to all the facts and circumstances concerning the matter that is to be audited, examined, or investigated.

The bill does not appear to have a fiscal impact on state government.

The bill has an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Governor's Chief Inspector General

The Office of Chief Inspector General (CIG) is responsible for promoting accountability, integrity, and efficiency in agencies under the Governor's jurisdiction.<sup>1</sup> The CIG monitors the activities of the agency inspectors general under the Governor's jurisdiction and is required, among other things, to do the following:

- Initiate, supervise, and coordinate investigations 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;
- 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 and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction; and
- Conduct special investigations and management reviews at the request of the Governor.<sup>2</sup>

In exercising the authority of the office, the Governor's Chief Inspector General may, among other things, 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.<sup>3</sup>

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

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

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

## Agency Inspectors General

An Office of Inspector General (OIG) is established in each state agency<sup>4</sup> to provide a central point for the coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government.<sup>5</sup> Each agency OIG is, among other things, responsible for the following:

- 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;
- Keeping the agency head,<sup>6</sup> or the CIG for agencies under the jurisdiction of the Governor, informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the agency; recommending corrective action concerning fraud, abuses, and deficiencies; and reporting on the progress made in implementing corrective action;
- Ensuring effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies to avoid duplication; and
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities.

With respect to investigations, each OIG must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.<sup>7</sup> 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, including freedom from any interference with investigations and timely access to records and other sources of information;
- Submit to entities contracting with the state or an individual substantially affected the findings of investigations involving such entities or individual, who must be advised that they may submit a written response to the findings, and whose written response, if any, must be included in the final report along with the inspector general's rebuttal, if any; and
- Submit timely final reports on investigations to the agency head, except for whistle-blower's investigations, which must be conducted and reported pursuant to the Whistle-blower's Act.<sup>8</sup>

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<sup>4</sup> S. 20.055(1)(d), F.S. defines the term "state agency" as each department created pursuant to ch. 20, F.S., 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 Florida Gaming Control Commission, and the state courts system.

<sup>5</sup> S. 20.055(2), F.S.

<sup>6</sup> Section 20.055(1)(a), F.S., defines the term "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., 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 chair of the Florida Gaming Control Commission, and the Chief Justice of the State Supreme Court.

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

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

## Board of Governors Inspector General

The Board of Governors (BOG) is responsible for operating, regulating, controlling, and being fully responsible for the management of the State University System. Pursuant to Florida's Constitution, the BOG's management is subject to the powers of the Legislature to appropriate for the expenditure of funds. Like other state agencies, the BOG has an Office of Inspector General charged with promoting accountability, financial integrity and efficiency as required by law. The BOG Office of Inspector General is also charged with detecting fraud and abuse within state universities.

If the BOG determines that the board of trustees of a state university is unwilling or unable to address substantiated allegations of waste, fraud, or financial mismanagement within a state university, the BOG Inspector General must conduct, coordinate, or request an investigation into the substantiated allegations.<sup>9</sup>

The BOG Inspector General, when performing its duties, must have access to all information and personnel necessary to perform its duties and has all of the powers, duties, and responsibilities as authorized in s. 20.055, F.S.<sup>10</sup>

In 2019, the Florida House of Representatives conducted an investigation into the unauthorized use of appropriated funds for fixed capital outlay projects at the University of Central Florida. Among the investigatory findings was that the BOG's Office of Inspector General lacked resources to exercise the robust investigative role intended by the inspector general statutes and that such resources are essential to holding universities accountable to the BOG. To address the finding, the investigatory report recommended the BOG Inspector General investigate significant complaints or reports of possible waste, fraud, and mismanagement and submit investigative findings to the BOG, the Speaker of the House of Representatives, and the Senate President. The investigatory report further recommended, if requested by the BOG, consideration be given to authorize the BOG Inspector General to exercise subpoena power on behalf of a state university.

### **Effect of Proposed Changes**

The bill authorizes the BOG Inspector General, or designee, to issue and serve subpoenas and subpoenas duces tecum on behalf of the BOG or a state university to compel the attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium.

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The bill also provides for the BOG Inspector General to require or allow a person to file a statement, in writing, under oath, as to all the facts and circumstances concerning the matter that is to be audited, examined, or investigated.

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

**Section 1:** Amends s. 20.155, F.S., granting the Office of the Inspector General of the Board of Governors additional authority to take certain actions in carrying out its duties.

**Section 2:** Provides an effective date of July 1, 2023.

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<sup>9</sup> S. 20.155(5), F.S.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### 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 governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the Postsecondary Education & Workforce Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment authorized the Board of Governors Inspector General, or designee, to issue and serve subpoenas in addition to subpoenas duces tecum.

The bill analysis is drafted to the committee substitute adopted by the Postsecondary Education & Workforce Subcommittee.