

A bill to be entitled

An act relating to agency inspectors general; amending s. 20.055, F.S.; providing definitions; requiring agency inspectors general to comply with certain principles and standards; requiring an inspector general to submit findings of an audit to specified persons or entities; requiring agencies under the Governor to notify the Chief Inspector General of inspector general appointments and terminations; prohibiting agency staff from preventing or prohibiting the inspector general or director of auditing from initiating, carrying out, or completing any audit or investigation; requiring audits to be conducted in accordance with the current International Standards for the Professional Practice of Internal Auditing; requiring the inspector general of each state agency to report certain written complaints to the Chief Inspector General; requiring the Chief Inspector General to fulfill certain duties and responsibilities; requiring a state agency to reimburse legal fees and costs that are incurred by certain individuals and entities under certain conditions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 20.055, Florida Statutes, is amended to read:

20.055 Agency inspectors general.--

(1) For the purposes of this section:

29 (a) "State agency" means each department created pursuant
30 to this chapter, and also includes the Executive Office of the
31 Governor, the Department of Military Affairs, the Fish and
32 Wildlife Conservation Commission, the Office of Insurance
33 Regulation of the Financial Services Commission, the Office of
34 Financial Regulation of the Financial Services Commission, the
35 Public Service Commission, the Board of Governors of the State
36 University System, and the state courts system.

37 (b) "Agency head" means a public official such as the
38 Governor, a Cabinet officer, a secretary as defined in s.
39 20.03(5), or an executive director as defined in s. 20.03(6). It
40 also includes the chair of the Public Service Commission, the
41 Director of the Office of Insurance Regulation of the Financial
42 Services Commission, the Director of the Office of Financial
43 Regulation of the Financial Services Commission, and the Chief
44 Justice of the State Supreme Court. The term does not include
45 the head of, or an officer of, a private entity operating as a
46 for-profit or not-for-profit entity.

47 (c) "Individuals substantially affected" means natural
48 persons who have established a real and sufficiently immediate
49 injury in fact due to the findings, conclusions, or
50 recommendations of a final report of a state agency inspector
51 general, who are the subject of the audit or investigation, and
52 who do not have or are not currently afforded an existing right
53 to an independent review process. Employees of the state,
54 including career service, probationary, other personal service,
55 Selected Exempt Service, and Senior Management Service
56 employees, are not covered by this definition. This definition

57 also does not cover former employees of the state if the final
58 report of the state agency inspector general relates to matters
59 arising during a former employee's term of state employment.

60 (d) "Entities contracting with the state" means for-profit
61 and not-for-profit organizations or businesses having a legal
62 existence, such as corporations or partnerships, as opposed to
63 natural persons, that have entered into a relationship with a
64 state agency as defined in paragraph (a) to provide for
65 consideration certain goods or services to the state agency or
66 on behalf of the state agency. The relationship may be evidenced
67 by payment by warrant or purchasing card, contract, purchase
68 order, provider agreement, or other such mutually agreed upon
69 relationship.

70 (e) "Additional material relevant" means evidence
71 submitted to the state agency inspector general prior to release
72 of the final report that likely would have affected the
73 investigative findings. Such evidence is not merely cumulative
74 of evidence considered by the state agency inspector general
75 and, to be relevant, must tend to prove or disprove the matters
76 at issue in the investigation. Newly discovered evidence may be
77 considered if it was discovered subsequent to the agency
78 inspector general's final report and the agency inspector
79 general has affirmatively refused to reopen the investigation
80 despite such evidence. Such evidence shall not have been
81 withheld from the state agency inspector general during the
82 original investigation.

83 (f) "Original investigation" means an official
84 investigative review by a state agency inspector general of

85 information relative to suspected violations of any law, rule,
86 or agency policy resulting in written findings.

87 (2) The Office of Inspector General is hereby established
88 in each state agency to provide a central point for coordination
89 of and responsibility for activities that promote
90 accountability, integrity, and efficiency in government. It
91 shall be the duty and responsibility of each inspector general,
92 with respect to the state agency in which the office is
93 established, to:

94 (a) Advise in the development of performance measures,
95 standards, and procedures for the evaluation of state agency
96 programs.

97 (b) Assess the reliability and validity of the information
98 provided by the state agency on performance measures and
99 standards, and make recommendations for improvement, if
100 necessary, prior to submission of those measures and standards
101 to the Executive Office of the Governor pursuant to s.
102 216.0166(1).

103 (c) Review the actions taken by the state agency to
104 improve program performance and meet program standards and make
105 recommendations for improvement, if necessary.

106 (d) Provide direction for, supervise, and coordinate
107 audits, investigations, and management reviews relating to the
108 programs and operations of the state agency, except that when
109 the inspector general does not possess the qualifications
110 specified in subsection (4), the director of auditing shall
111 conduct such audits.

112 (e) Conduct, supervise, or coordinate other activities

113 carried out or financed by that state agency for the purpose of
 114 promoting economy and efficiency in the administration of, or
 115 preventing and detecting fraud and abuse in, its programs and
 116 operations.

117 (f) Keep such agency head informed concerning fraud,
 118 abuses, and deficiencies relating to programs and operations
 119 administered or financed by the state agency, recommend
 120 corrective action concerning fraud, abuses, and deficiencies,
 121 and report on the progress made in implementing corrective
 122 action.

123 (g) Ensure effective coordination and cooperation between
 124 the Auditor General, federal auditors, and other governmental
 125 bodies with a view toward avoiding duplication.

126 (h) Review, as appropriate, rules relating to the programs
 127 and operations of such state agency and make recommendations
 128 concerning their impact.

129 (i) Ensure that an appropriate balance is maintained
 130 between audit, investigative, and other accountability
 131 activities.

132 (j) Comply with the General Principles and Standards for
 133 Offices of Inspector General as published and revised by the
 134 Association of Inspectors General.

135 (3) (a) The inspector general shall be appointed by the
 136 agency head. For agencies under the direction of the Governor,
 137 the appointment shall be made after notifying the Governor and
 138 the Chief Inspector General in writing, at least 7 days prior to
 139 an offer of employment, of the agency head's intention to hire
 140 the inspector general.

141 (b) Each inspector general shall report to and be under
 142 the general supervision of the agency head and shall not be
 143 subject to supervision by any other employee of the state
 144 agency. The inspector general shall be appointed without regard
 145 to political affiliation.

146 (c) An inspector general may be removed from office by the
 147 agency head. For agencies under the direction of the Governor,
 148 the agency head shall notify the Governor and the Chief
 149 Inspector General, in writing, of the intention to terminate the
 150 inspector general at least 7 days prior to the removal. For
 151 state agencies under the direction of the Governor and Cabinet,
 152 the agency head shall notify the Governor and Cabinet in writing
 153 of the intention to terminate the inspector general at least 7
 154 days prior to the removal.

155 (d) The agency head or agency staff shall not prevent or
 156 prohibit the inspector general ~~or director of auditing~~ from
 157 initiating, carrying out, or completing any audit or
 158 investigation.

159 (4) To ensure that state agency audits are performed in
 160 accordance with applicable auditing standards, the inspector
 161 general or the director of auditing within the inspector
 162 general's office shall possess the following qualifications:

163 (a) A bachelor's degree from an accredited college or
 164 university with a major in accounting, or with a major in
 165 business which includes five courses in accounting, and 5 years
 166 of experience as an internal auditor or independent postauditor,
 167 electronic data processing auditor, accountant, or any
 168 combination thereof. The experience shall at a minimum consist

169 of audits of units of government or private business
 170 enterprises, operating for profit or not for profit; or

171 (b) A master's degree in accounting, business
 172 administration, or public administration from an accredited
 173 college or university and 4 years of experience as required in
 174 paragraph (a); or

175 (c) A certified public accountant license issued pursuant
 176 to chapter 473 or a certified internal audit certificate issued
 177 by the Institute of Internal Auditors or earned by examination,
 178 and 4 years of experience as required in paragraph (a).

179 (5) In carrying out the auditing duties and
 180 responsibilities of this act, each inspector general shall
 181 review and evaluate internal controls necessary to ensure the
 182 fiscal accountability of the state agency. The inspector general
 183 shall conduct financial, compliance, electronic data processing,
 184 and performance audits of the agency and prepare audit reports
 185 of his or her findings. The scope and assignment of the audits
 186 shall be determined by the inspector general; however, the
 187 agency head may at any time direct the inspector general to
 188 perform an audit of a special program, function, or
 189 organizational unit. The performance of the audit shall be under
 190 the direction of the inspector general, except that if the
 191 inspector general does not possess the qualifications specified
 192 in subsection (4), the director of auditing shall perform the
 193 functions listed in this subsection.

194 (a) Such audits shall be conducted in accordance with the
 195 current International Standards for the Professional Practice of
 196 Internal Auditing as ~~and subsequent Internal Auditing Standards~~

197 ~~or Statements on Internal Auditing Standards~~ published by the
198 Institute of Internal Auditors, Inc., or, where appropriate, in
199 accordance with generally accepted governmental auditing
200 standards. All audit reports issued by internal audit staff
201 shall include a statement that the audit was conducted pursuant
202 to the appropriate standards.

203 (b) Audit workpapers and reports shall be public records
204 to the extent that they do not include information which has
205 been made confidential and exempt from the provisions of s.
206 119.07(1) pursuant to law. However, when the inspector general
207 or a member of the staff receives from an individual a complaint
208 or information that falls within the definition provided in s.
209 112.3187(5), the name or identity of the individual shall not be
210 disclosed to anyone else without the written consent of the
211 individual, unless the inspector general determines that such
212 disclosure is unavoidable during the course of the audit or
213 investigation.

214 (c) The inspector general and the staff shall have access
215 to any records, data, and other information of the state agency
216 he or she deems necessary to carry out his or her duties. The
217 inspector general is also authorized to request such information
218 or assistance as may be necessary from the state agency or from
219 any federal, state, or local government entity.

220 (d) At the conclusion of each audit, the inspector general
221 shall submit preliminary findings and recommendations to the
222 person responsible for supervision of the program function or
223 operational unit who shall respond to any adverse findings
224 within 20 working days after receipt of the tentative findings.

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225 Such response and the inspector general's rebuttal to the
226 response shall be included in the final audit report.

227 (e) At the conclusion of an audit in which the results of
228 the audit are published and disbursed and the subject of the
229 audit is a specific, singular entity contracting with the state,
230 the inspector general shall submit findings to the subject who
231 shall respond to any adverse findings within 20 working days.
232 Such response and the inspector general's rebuttal to the
233 response, if any, shall be included in the final audit report.

234 (f)~~(e)~~ The inspector general shall submit the final report
235 to the agency head and to the Auditor General.

236 (g)~~(f)~~ The Auditor General, in connection with the
237 independent postaudit of the same agency pursuant to s. 11.45,
238 shall give appropriate consideration to internal audit reports
239 and the resolution of findings therein. The Legislative Auditing
240 Committee may inquire into the reasons or justifications for
241 failure of the agency head to correct the deficiencies reported
242 in internal audits that are also reported by the Auditor General
243 and shall take appropriate action.

244 (h)~~(g)~~ The inspector general shall monitor the
245 implementation of the state agency's response to any report on
246 the state agency issued by the Auditor General or by the Office
247 of Program Policy Analysis and Government Accountability. No
248 later than 6 months after the Auditor General or the Office of
249 Program Policy Analysis and Government Accountability publishes
250 a report on the state agency, the inspector general shall
251 provide a written response to the agency head on the status of
252 corrective actions taken. The Inspector General shall file a

253 copy of such response with the Legislative Auditing Committee.

254 (i)~~(h)~~ The inspector general shall develop long-term and
255 annual audit plans based on the findings of periodic risk
256 assessments. The plan, where appropriate, should include
257 postaudit samplings of payments and accounts. The plan shall
258 show the individual audits to be conducted during each year and
259 related resources to be devoted to the respective audits. The
260 Chief Financial Officer, to assist in fulfilling the
261 responsibilities for examining, auditing, and settling accounts,
262 claims, and demands pursuant to s. 17.03(1), and examining,
263 auditing, adjusting, and settling accounts pursuant to s. 17.04,
264 may utilize audits performed by the inspectors general and
265 internal auditors. For state agencies under the Governor, the
266 audit plans shall be submitted to the Governor's Chief Inspector
267 General. The plan shall be submitted to the agency head for
268 approval. A copy of the approved plan shall be submitted to the
269 Auditor General.

270 (6) In carrying out the investigative duties and
271 responsibilities specified in this section, each inspector
272 general shall initiate, conduct, supervise, and coordinate
273 investigations designed to detect, deter, prevent, and eradicate
274 fraud, waste, mismanagement, misconduct, and other abuses in
275 state government. For these purposes, each inspector general
276 ~~state agency~~ shall:

277 (a) Receive complaints and coordinate all activities of
278 the agency as required by the Whistle-blower's Act pursuant to
279 ss. 112.3187-112.31895.

280 (b) Receive and consider the complaints which do not meet

281 the criteria for an investigation under the Whistle-blower's Act
 282 and conduct, supervise, or coordinate such inquiries,
 283 investigations, or reviews as the inspector general deems
 284 appropriate.

285 (c) Report expeditiously to the Department of Law
 286 Enforcement or other law enforcement agencies, as appropriate,
 287 whenever the inspector general has reasonable grounds to believe
 288 there has been a violation of criminal law.

289 (d) Conduct investigations and other inquiries free of
 290 actual or perceived impairment to the independence of the
 291 inspector general or the inspector general's office. This shall
 292 include freedom from any interference with investigations and
 293 timely access to records and other sources of information.

294 (e) At the conclusion of each investigation in which the
 295 subject of the investigation is a specific entity contracting
 296 with the state or an individual substantially affected by the
 297 findings, conclusions, and recommendations, the inspector
 298 general shall, consistent with chapter 119, submit findings to
 299 the subject who shall respond to any adverse findings within 10
 300 days. Such response and the inspector general's rebuttal to the
 301 response, if any, shall be included in the final investigative
 302 report.

303 (f)~~(e)~~ Submit in a timely fashion final reports on
 304 investigations conducted by the inspector general to the agency
 305 head, except for whistle-blower's investigations, which shall be
 306 conducted and reported pursuant to s. 112.3189.

307 (7) Each inspector general shall, not later than September
 308 30 of each year, prepare an annual report summarizing the

309 activities of the office during the immediately preceding state
310 fiscal year. The final report shall be furnished to the agency
311 head. Such report shall include, but need not be limited to:

312 (a) A description of activities relating to the
313 development, assessment, and validation of performance measures.

314 (b) A description of significant abuses and deficiencies
315 relating to the administration of programs and operations of the
316 agency disclosed by investigations, audits, reviews, or other
317 activities during the reporting period.

318 (c) A description of the recommendations for corrective
319 action made by the inspector general during the reporting period
320 with respect to significant problems, abuses, or deficiencies
321 identified.

322 (d) The identification of each significant recommendation
323 described in previous annual reports on which corrective action
324 has not been completed.

325 (e) A summary of each audit and investigation completed
326 during the reporting period.

327 (8) The inspector general in each agency under the
328 Governor's jurisdiction shall timely report to the Chief
329 Inspector General all written complaints received concerning the
330 duties and responsibilities outlined in this section or any
331 misconduct alleged related to the office of the inspector
332 general or its employees.

333 (9) For agencies under the Governor's jurisdiction, the
334 Chief Inspector General in the Executive Office of the Governor,
335 as defined in s. 14.32, shall:

336 (a) Receive and consider all complaints against offices of

337 inspectors general or their employees and conduct, supervise, or
338 coordinate such inquiries, investigations, or reviews as the
339 Chief Inspector General considers appropriate.

340 (b) Develop policies and procedures for reviewing
341 complaints against a state agency office of inspector general or
342 its employees, including, but not limited to, complaints
343 regarding misconduct, failure to properly follow professional
344 standards, or any other violation of agency policy, rule, or law
345 which is consistent with the definitions in this section and s.
346 14.32. The policies and procedures must identify exemptions from
347 this process, including, but not limited to, whistle-blower
348 investigations conducted in accordance with ss. 112.3187-
349 112.31895. These policies and procedures must afford entities
350 contracting with state agencies, and individuals substantially
351 affected by the findings, conclusions, and recommendations, a
352 meaningful opportunity to express their complaint and present
353 additional material relevant to the original investigation.
354 Policies and procedures specified herein are not subject to
355 rulemaking under chapter 120.

356 (c) Distribute the report of any investigation conducted
357 or supervised by the Chief Inspector General to the office of
358 the inspector general of the state agency, the agency head of
359 the subject's employing agency, and the person that filed the
360 complaint against the office of inspector general of the state
361 agency or its employees.

362 (10) If a state agency inspector general's reported
363 adverse findings regarding entities contracting with state
364 agencies and individuals substantially affected by the findings,

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365 conclusions, and recommendations are determined to be not
366 substantially justified after an informal evidentiary hearing by
367 a hearing master selected by agreement of the state agency and
368 the Chief Inspector General, the agency shall reimburse
369 reasonable legal fees and costs not to exceed \$50,000
370 specifically associated with filing and pursuing the complaints,
371 which are incurred by the entities contracting with state
372 agencies and individuals substantially affected by the findings,
373 conclusions, and recommendations.

374 (11)-(8) Each agency inspector general shall, to the extent
375 both necessary and practicable, include on his or her staff
376 individuals with electronic data processing auditing experience.

377 Section 2. This act shall take effect July 1, 2008.