

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1385 Inspectors General

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

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N, As CS	Harrington	Williamson
2) Appropriations Committee	19 Y, 8 N, As CS	Kramer	Leznoff

SUMMARY ANALYSIS

The Office of Inspector General 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 are appointed by the agency head, and may only be removed by the agency head. The Office of the Chief Inspector General (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 provides that the CIG must be appointed by the Governor, subject to Senate confirmation. Upon a change in Governors or a reelection of Governors, the Governor must appoint, or reappoint, a CIG before adjournment sine die of the first regular session of the Legislature that convenes after such change in Governors or reelection.

The bill increases the independence of each inspector general in a state agency under the jurisdiction of the Governor. Such inspectors general must report to the CIG and may only be hired by the CIG. Such inspectors general may only be removed from the office for cause by the CIG.

The bill does not appear to have a fiscal impact on state or local governments.

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 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 inspector general office 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 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.⁴ For agencies under the direction of the Governor, the appointment must be made after notifying the Governor and the Chief Inspector General in writing, at least seven days prior to an offer of employment, of the agency head's intention to hire the

¹ Section 20.055(1)(a), 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, and the state court system.

² Section 20.055(1)(b), 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.

inspector general.⁵ 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

Inspectors general may be removed only by the agency head.⁷ For agencies under the direction of the Governor, the agency head must notify the Governor and the CIG in writing of the intention to terminate the inspector general, at least seven days prior to the removal. For state agencies under the direction of the Governor and Cabinet, the agency head must notify the Governor and Cabinet in writing of the intention to terminate the inspector general at least seven days prior to removal.⁸

Auditing Standards

Inspectors general must possess minimum education and experience qualifications, and the investigations they conduct must adhere to specific internal auditing standards.⁹ Final reports are submitted to the agency head and the Auditor General, whose office is directed to give official recognition to their findings and recommendations as part of its post-audit responsibilities.¹⁰

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.¹¹ 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.¹²

Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards 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.¹³

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.¹⁴

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 also authorized to request such information or assistance as may be necessary from the state agency or from any federal, state, or local governmental entity.¹⁵

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

⁵ *Id.*

⁶ Section 20.055(3)(b), F.S.

⁷ Section 20.055(3)(c), F.S.

⁸ *Id.*

⁹ *See* s. 20.055(4), F.S.

¹⁰ Section 20.055(5)(f) and (g), F.S.

¹¹ Section 20.055(5), F.S.

¹² *Id.*

¹³ Section 20.055(5)(a), F.S.

¹⁴ 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.

¹⁵ Section 20.055(5)(c), F.S.

findings. Such response, and the inspector general's rebuttal to the response, must be included in the final audit report.¹⁶

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.¹⁷

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.¹⁸

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 must be submitted to the Governor's CIG. The plan must be submitted to the agency head for approval, and a copy of the approved plan must be submitted to the Auditor General.¹⁹

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, management, 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 Act²⁰ 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.²¹

¹⁶ Section 20.055(5)(d), F.S.

¹⁷ Section 20.055(5)(g), F.S.

¹⁸ Section 20.055(5)(h), F.S.

¹⁹ Section 20.055(5)(i), F.S.

²⁰ Sections 112.3187 – 112.31895, F.S.

²¹ Section 20.055(6), F.S.

Annually, each inspector general must submit a report to the agency head on its activities.²²

Effect of the Proposed Changes

Chief Inspector General

The bill provides that a CIG must be appointed or reappointed after a gubernatorial election, subject to Senate confirmation. Upon a change in Governors or reelection of the Governor, the Governor must appoint, or may reappoint, a CIG before adjournment sine die of the first regular session of the Legislature that convenes after the change in Governors or reelection.

Agency Inspector General

Each inspector general in an agency under the jurisdiction of the Governor must keep the CIG, rather than the agency head, informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency; recommend corrective action concerning fraud, abuses, and deficiencies; and report on the progress made in implementing corrective action.

An inspector general for a state agency under the jurisdiction of the Governor must be appointed by the CIG, rather than the agency head. Such inspector general is under the general supervision of the agency head, reports to the CIG, and may hire and remove staff within his or her office in consultation with the CIG, but independently of the agency.

An inspector general for a state agency under the jurisdiction of the Governor may only be removed from office for cause by the CIG. Cause includes concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties. All intentions to remove an agency inspector general, regardless of whether the position is under the jurisdiction of the Governor, must provide 21 days' notice, rather than seven of such intention to remove. If the inspector general disagrees with the removal, such inspector general may present objections in writing to the agency head or Governor within the 21-day period.

Audits

Each agency inspector general must submit a final audit report to the agency head, Auditor General, and, for state agencies under the jurisdiction of the Governor, the CIG. When responding to a report by the Auditor General or OPPAGA, the inspector general must provide a written response to the agency head or, for state agencies under the jurisdiction of the Governor, the CIG on the status of the corrective action taken.

B. SECTION DIRECTORY:

Section 1. amends s. 14.32, F.S., revising provisions relating to the duties, appointment, and removal of the Chief Inspector General.

Section 2. amends s. 20.055, F.S., revising provisions relating to the duties, appointment, and removal of agency inspectors general.

Section 3. provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

²² Section 20.055(7), F.S.
STORAGE NAME: h1385c.APC
DATE: 4/11/2014

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. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Removal "For Cause"

The bill provides that for state agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the CIG for cause. Inspectors general under the jurisdiction of the Governor and Cabinet, however, may be removed for any reason.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2014, the Government Operations Subcommittee adopted two amendments and reported the bill favorably with committee substitute. The amendments:

- Clarify that the agency inspector general must create a budget in consultation with the CIG that conforms to the agency mission; and
- Clarify that the changes in the bill apply to agencies under the jurisdiction of the Governor and not to agencies under the jurisdiction of the Governor and Cabinet or Cabinet.

On April 10, 2014, the Appropriations Committee adopted three amendments and reported the bill favorably with committee substitute. The amendments:

- Removed language requiring the CIG to provide independent legal advice to agency inspectors general under the jurisdiction of the Governor;
- Removed language requiring each agency office of inspector general to have its own budget, within the state agency, to meet its mission developed in consultation with the CIG; and
- Removed language requiring the chief inspector general to approve audit plans of the agency inspectors general.

