

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1283 Inspectors General
SPONSOR(S): Local Government Affairs Subcommittee; Rader
TIED BILLS: **IDEN./SIM. BILLS:** SB 1412

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N	Harrington	Williamson
2) Local Government Affairs Subcommittee	13 Y, 0 N, As CS	Zaborske	Miller
3) State Affairs Committee			

SUMMARY ANALYSIS

An inspector general office provides a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Inspectors general under the jurisdiction of the Cabinet or the Governor and Cabinet are appointed by the agency head and may only be removed by the agency head. Inspectors general under the jurisdiction of the Governor are appointed by the Chief Inspector General (CIG) and may only be removed by the CIG. The CIG within the Executive Office of the Governor provides oversight and monitors the activities of the agency inspectors general under the Governor's jurisdiction. Generally, an inspector general report is exempt from public records requirements until the investigation is no longer active.

The bill requires the CIG to publish, on the website of the Executive Office of the Governor, final investigative reports performed by the CIG or received from an agency inspector general. An agency inspector general must publish final investigative reports, including all responses and rebuttals, on the agency's website and must provide a copy to the CIG for publication on the website of the Executive Office of the Governor. Neither the CIG nor an agency inspector general may publish a report online if the investigation is confidential or otherwise exempt from disclosure by law. The reports must be published within 10 days after the report has been finalized or received by the CIG.

The bill defines "unit of local government" to mean a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate and politic authorized or created by general or special law. It requires a unit of local government to publish on its website, or the county to publish on its website if the unit of local government does not have a website, the final investigative report by an inspector general prepared for, or on behalf of, the unit of local government within 10 days after the report becomes final, except if the investigation is confidential or otherwise exempt from disclosure.

The bill may have a fiscal impact on state and local government. See FISCAL COMMENTS.

The act shall take effect July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Government Inspectors General and Auditing

Authorized under s. 20.055, F.S., the Office of Inspector General (OIG) 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 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 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 or the CIG for agencies under the jurisdiction of the Governor, 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. For agencies under the jurisdiction of the Governor, the inspector general is appointed by the CIG.⁴ The agency head or the CIG must notify the Governor in writing, at least seven days prior to an offer of employment, of the intention to hire the inspector general.⁵ Each inspector general must report to and is under the general supervision of the

¹ 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, and the state court system.

² 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, and the Chief Justice of the State Supreme Court.

³ Section 20.055(2), F.S.

⁴ Section 20.055(3)(a), F.S.

⁵ *Id.*

agency head and is not subject to supervision by any other employee of the state agency.⁶ For state agencies under the jurisdiction of the Governor, the inspector general is under the general supervision of the agency head, reports to the CIG, and may hire and remove staff within the OIG in consultation with the CIG but independently of the state agency.⁷

Inspectors general must possess minimum education and experience qualifications, and the investigations they conduct must adhere to specific internal auditing standards.⁸ 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:⁹

- A bachelor's degree from an accredited college or university with a major in accounting, or with a major in business which 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;
- 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 license or certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and four years of experience.

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 as 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

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.¹⁵

⁶ Section 20.055(3)(b), F.S.

⁷ *Id.*

⁸ See s. 20.055(4), F.S.

⁹ Section 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 See s. 20.055(6), F.S.

Annually, each inspector general must submit a report to the agency head on his or her activities. For agencies under the jurisdiction of the Governor, the inspector general must provide the report to the CIG.¹⁶

Local Government Auditing

Current law requires local governments¹⁷ to submit to the Department of Financial Services (DFS) an annual financial report covering their operations for the preceding fiscal year.¹⁸ Each local governmental entity's website must provide a link to DFS' website to view the entity's annual financial report. If the local governmental entity does not have an official website, the county government's website must provide the required link for the local governmental entity.¹⁹

If a local government will not be audited by the Auditor General, then the local government must provide for an annual financial audit to be conducted within nine months after the end of its fiscal year by an independent certified public accountant retained by the entity and paid for from public funds.²⁰ The audit report of an internal auditor prepared for or on behalf of a local government becomes a public record when the audit becomes final. Audit work papers and notes related to the audit are confidential and exempt from public record requirements until the audit report becomes final.²¹

Effect of the Proposed Changes

The bill requires the CIG to publish, on the website of the Executive Office of the Governor, final investigative reports performed by the CIG or received from an agency inspector general. An agency inspector general must publish final investigative reports, including all responses and rebuttals, on the agency's website and must provide a copy to the CIG for publication on the website of the Executive Office of the Governor. Neither the CIG nor an agency inspector general may publish a report online if the investigation is confidential or otherwise exempt²² from disclosure by law. The reports must be published within 10 days after the report has been finalized or received by the CIG.

The bill defines "unit of local government" to mean a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate and politic authorized or created by general or special law. It requires a unit of local government to publish on its website, or the county to publish on its website if the unit of local government does not have a website, the final investigative report by an inspector general prepared for, or on behalf of, the unit of local government within 10 days after the report becomes final, except if the investigation is confidential or otherwise exempt from disclosure.²³ It provides that the investigation becomes final when the investigative report is presented to the unit of local government.

B. SECTION DIRECTORY:

Section 1. amends s. 14.32, F.S., requiring the CIG to publish final investigative reports on the Executive Office of the Governor's website within a specified period.

¹⁶ Section 20.055(7), F.S.

¹⁷ Section 218.31(1), F.S., defines "local governmental entity" as a county agency, a municipality, or a special district. For purposes of s. 218.32, F.S., the term also includes a housing authority created under chapter 421, F.S.

¹⁸ Section 218.32(1)(a), F.S.

¹⁹ Section 218.32(1)(g), F.S. It appears that every Florida municipality may not have a website, see <http://www.myflorida.com/cities/> (last visited 03/25/2015); whereas, every Florida county appears to have website, see <http://www.stateofflorida.com/Portal/DesktopDefault.aspx?tabid=35> (last visited 03/25/2015). Pursuant to s. 189.069, F.S., all special districts currently should have an official website, but it appears that every special district may not yet have a website, see <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/websitelist.cfm> (last visited 03/25/2015).

²⁰ Section 218.39(1), F.S.

²¹ Section 119.0713(2), F.S.

²² Section 112.3188, F.S., provides that certain active investigations conducted by the CIG or agency inspectors general are exempt from public record requirements.

²³ Section 119.0713(2)(a), F.S., provides that an investigative report of the inspector general becomes a public record when the investigation becomes final. An investigation becomes final when the report is presented to the unit of local government.

Section 2. amends s. 20.055, F.S., requiring an agency inspector general to publish final investigative reports on the agency's website within a specified period.

Section 3. creates s. 286.0015, F.S., providing a definition; requiring a unit of local government to publish final investigative reports on its website within a specified period; specifying when an investigation becomes final.

Section 4. provides that the bill becomes effective on July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The website posting requirements will have an indeterminate fiscal impact on state and local governments, as technical sophistication varies widely among public entities.

The Office of Financial Regulations analyzed the bill²⁴ and determined that the bill has the potential for increased state expenditures related to litigation and the redaction of protected information, noting:

- Publication of inspector general investigative reports may result in increased appeals to the Public Employee Relations Commission (PERC) as a name-clearing mechanism when the response and rebuttal provisions of s. 20.055, F.S., do not apply.
- An increase in PERC appeals may increase work load for the Office of General Counsel.
- Investigative reports with confidential information or information exempted would require review and redaction prior to publication, which would increase annual manhour expenses.
- Investigative reports required to be published on the Executive Office of the Governor's website and agency websites would require staff time to scan investigative reports for uploading and staff time to upload the scanned documents which would be an additional expense not recoverable from the consumers accessing the published reports.

The Florida Department of Agriculture and Consumer Services (DACS) also analyzed the bill²⁵ and determined that the proposed change would require the DACS Office of the Inspector General to post

²⁴ OFR Analysis of HB 1283 dated 03/15/2015, available at <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=5359&yr=2015> (last visited 03/23/2015).

²⁵ DACS Analysis 03/16/2015, available at <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=5359&yr=2015> (last visited 03/23/2015).

approximately 120 investigative reports per year to the website, which would require additional personnel resources. DACS estimates one FTE would be required to review and redact all reports prior to submission to the website, and additional reviews would be required by the office of General Counsel to ensure adherence to all applicable statutes and policies. The proposed change also would require the development and/or maintenance of a newly created website to which all completed investigative reports would be submitted. DACS notes that a web database application is recommended because of the volume of reports, which requires a vendor to provide the necessary expertise and reliability. DACS estimates the costs associated with website development would be \$60,000 to \$100,000.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill requires county and municipal governments to publish investigative reports on their websites, which may result in an indeterminate negative fiscal impact. However, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

2. Other:

None.²⁶

B. RULE-MAKING AUTHORITY:

Additional rulemaking authority is neither provided nor apparently needed to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Line 38

The bill generally refers to “final investigative reports.” Florida Department of Agriculture and Consumer Services (DACS) in its analysis states that it produces many different types of investigative reports, including: preliminary investigative reports, miscellaneous investigative reports, formal investigative reports, and assist other agency investigative reports.²⁷ Additionally, DACS points out that it is not clear what must be included, as many reports include multiple exhibits, such as: recorded statements (which would need to be transcribed and redacted), photographic evidence, written witness/subject statements, computer forensic evidence, property evidence, and forensic evidence.

Additionally, DACS notes in its analysis:

- The public posting of all reports, including reports where subjects were exonerated or where insufficient evidence existed to sustain an allegation, could create counter-productive workplace issues.
- Publishing may have a chilling effect and deter employees from coming forward to report misconduct.
- The bill does not state how long reports should remain on the database, which could be a significant factor when determining server size and other such resources.

²⁶ In its analysis under “VII. Legal Issues,” DACS noted that the bill did not “distinguish between Cabinet level Inspectors General and Inspectors General under the Executive Office of the Governor.” DACS questioned whether the amendments to s. 20.055, F.S., in the bill would conflict with the authority of the Commissioner of Agriculture under Art. IV, s. 4(d), Fla. Const. The bill neither conflicts with nor impairs the Commissioner’s constitutional authority. The changes in the bill pertain to officers and agencies created and empowered by ch. 20, F.S. See Art. IV, s. 6, Fla. Const. Neither the Florida Constitution nor the statute creates a “Cabinet level Inspector General.”

²⁷ *Id.*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 25, 2015, the Local Government Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment makes the following changes to Section 3 of the bill:

- Clarifies that the inspector general report for a unit of local government to be published is a final investigative report.
- Provides that a county must publish on its website a final inspector general report for a unit of local government if that unit of local government does not have a website.

This analysis is drafted to the committee substitute as passed by the Local Government Affairs Subcommittee.