

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1283 Inspectors General & Auditors
SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Raulerson
TIED BILLS: CS/HB 1285 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N, As CS	Moore	Harrington
2) Public Integrity & Ethics Committee	16 Y, 0 N	Mitz	Rubottom
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Office of Inspector General (OIG) is established in each state agency to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Inspectors general under the jurisdiction of a Cabinet officer 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.

The bill amends provisions related to inspectors general, the CIG, and certain auditors. Specifically, the bill:

- Requires the CIG to meet the same educational and experience qualifications required of agency inspectors general;
- Requires the CIG to have open and direct access to the Governor at all times;
- Adds experience in fraud examination 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;
- Authorizes an inspector general and his or her staff to take and record testimony or statements of any person as reasonably necessary for the furtherance of an investigation or review;
- Requires agency inspectors general to include certain budget information in their annual reports;
- Requires the CIG to prepare an annual report that includes the budget information provided in the inspector general annual reports;
- Changes the term "electronic data processing" to "information technology" in various provisions to conform to current agency and industry terminology;
- Specifies that any staff member employed within an OIG is included in the Selected Exempt Service and that an agency inspector general is included in the Senior Management Service;
- Specifies that any auditor employed within the Division of Accounting and Auditing within the Department of Financial Services is included in the Selected Exempt Service; and
- Requires the State Board of Administration to establish an OIG and appoint an inspector general.

The bill does not appear to have a fiscal impact on local governments, but may have a fiscal impact on the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Inspectors General

Authorized under s. 20.055, F.S., an 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 and is required to do the following:

- Initiate, supervise, and coordinate investigations, recommend policies, 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;
- Request such assistance and information as may be necessary for the performance of the CIG's duties;
- 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 with outside agencies and the federal government to promote accountability, integrity, and efficiency in state government;
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction;
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor; and
- Conduct special investigations and management reviews at the request of the Governor.²

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;

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, the Office of Early Learning, and the state courts system.

² Section 14.32(2), F.S.

- Supervising and coordinating audits, investigations, and reviews relating to the programs and 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,³ or the CIG for agencies under the jurisdiction of the Governor; 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.⁴

For state agencies under the jurisdiction of the Governor, the inspector general must be appointed by the CIG. For state agencies under the jurisdiction of a Cabinet officer or the Governor and Cabinet, each agency head must appoint an inspector general.⁵

Qualifications

Inspectors general must possess minimum educational and experience qualifications, and the investigations they conduct must adhere to specific internal auditing standards.⁶ 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;
- 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.⁷

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.

³ 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, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.

⁴ Section 20.055(2), F.S.

⁵ Section 20.055(3)(a)1., F.S.

⁶ See s. 20.055(4), F.S.

⁷ Section 20.055(4)(a), F.S.

- 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.⁸

Investigations

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. 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. This must include freedom from any interference with investigations and timely access to records and other sources of information;
- At the conclusion of an investigation 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.⁹

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. 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. The report must be provided to the agency head or, for state agencies under the jurisdiction of the Governor, to the CIG. 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.¹⁰

⁸ Section 20.055(4)(b), F.S.

⁹ Section 20.055(7), F.S.

¹⁰ Section 20.055(8), F.S.

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, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.¹¹

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.¹² 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.¹³

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.¹⁴ Career Service employees that have completed the probationary period are also entitled to a grievance process¹⁵ and have the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.¹⁶

Selected Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System.¹⁷ 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.¹⁸ 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.¹⁹

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.²⁰ 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.²¹ 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.²²

State Board of Administration

The State Board of Administration (SBA) is established by Article IV, s. 4(e) of the State Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary (the Board). The statutory mandate of the SBA is to invest, manage, and safeguard assets of the Florida Retirement System Trust Fund as well as the assets of a variety of other funds, including the Florida Hurricane Catastrophe Fund, the Lawton Chiles Endowment Fund,

¹¹ Section 110.105(1), F.S.

¹² Section 110.2035(1), F.S.

¹³ Section 110.205(1), F.S.

¹⁴ Section 110.227(1), F.S.

¹⁵ Section 110.227(4), F.S.

¹⁶ Section 110.227(5) and (6), F.S.

¹⁷ Section 110.602, F.S.

¹⁸ Section 110.604, F.S.

¹⁹ See s. 110.603, F.S.

²⁰ Section 110.402(1), F.S.

²¹ Section 110.403(1)(a), F.S.

²² See s. 110.403(1)(c), F.S.

and Florida PRIME.²³ Section 215.44, F.S., outlines the SBA's specific powers and duties relating to the investment of these funds.

Section 215.44, F.S. also 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 is charged with the oversight of investment portfolios and overall management and investment of funds.²⁴

The SBA is statutorily required to have an independent Audit Committee, which serves as an objective party to monitor processes for financial reporting, internal controls and risk assessment, audit processes, and compliance with laws, rules, and regulations. 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.²⁵

The SBA has an independent Office of Internal Audit, established by internal policy. The objectives of the Office of Internal Audit are to provide independent assurance to the Audit Committee and management that the SBA's assets are safeguarded, processes are operating efficiently, and compliance is maintained with prescribed laws and SBA policies. To provide for the independence of the Office of Internal Audit, its personnel report to the Chief Audit Executive, who in turn reports functionally to the Audit Committee and administratively to the Executive Director.²⁶

Additionally, the Board has a Risk Management and Compliance Unit, led by a Chief Risk and Compliance Officer, and its own Inspector General.²⁷ The Risk Management and Compliance Unit serves as a management function in modifying and developing internal control and risk systems.²⁸ The Inspector General 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.²⁹

Effect of Proposed Changes

Chief Inspector General

The bill requires the CIG to meet the same educational and experience qualifications required of agency inspectors general. The bill also requires the CIG to have open and direct access to the Governor at all times.

Agency Inspector General Qualifications

The bill adds experience in fraud examination 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 managing programs for information security as a type of experience that an inspector general may have in order to meet the minimum experience requirements.

Investigations

The bill authorizes an inspector general and his or her staff to take and record testimony or statements of any person as reasonably necessary for the furtherance of an investigation or review undertaken by the inspector general.

²³ 2015-2016 Investment Report, State Board of Administration, at 3-6, available at <https://www.sbafla.com/fsb/Portals/FSB/Content/Performance/Annual/2015-16%20AIR.pdf?ver=2017-01-03-121048-220>.

²⁴ Section 21.44(1), F.S.

²⁵ Section 215.44(2)(c), F.S.

²⁶ State Board of Administration, Office of Internal Audit Charter, approved by the Audit Committee on August 22, 2016 (on file with Public Integrity & Ethics Committee staff).

²⁷ Section 215.44(2)(e), F.S.

²⁸ State Board of Administration Bill Analysis for HB 1283, March 15, 2017 (on file with Public Integrity & Ethics Committee staff).

²⁹ State Board of Administration Inspector General Position Description (on file with Public Integrity & Ethics Committee staff).

Annual Reports

The bill requires the annual report that each agency inspector general is required to prepare to include any increase or decrease in the total allocations or total expenditures in the inspector general's budget for the preceding state fiscal year compared to the total allocations or total expenditures in the budget for the prior state fiscal year and any increase or decrease in the number of permanent, temporary, loaned, grant-funded, or full-time equivalent staff within the OIG.

The bill also requires the CIG to prepare an annual report that summarizes the activities performed in compliance with inspector general duties and responsibilities and includes an aggregate of significant budgetary or administrative changes contained in the annual reports prepared by agency inspectors general for state agencies under the jurisdiction of the Governor.

Information Technology

The bill changes the term "electronic data processing" to "information technology" in various provisions to conform to current agency and industry terminology.

Employment Classification

The bill specifies that any staff member employed within an OIG is included in the Selected Exempt Service. In addition, agency inspectors general are included in the Senior Management Service. The bill also specifies that any auditor employed within the Division of Accounting and Auditing within the Department of Financial Services is included in the Selected Exempt Service.

State Board of Administration

The bill adds the SBA to the definition of "state agency" in s. 20.055, F.S., and adds the executive director of the SBA to the definition of "agency head," thereby requiring the SBA to establish an OIG and comply with the requirements of s. 20.055, F.S. The bill also adds to the list of the SBA's duties and powers in s. 215.44, F.S., a requirement for the SBA to appoint an inspector general. The bill specifies that the SBA has the sole authority to remove the inspector general.

B. SECTION DIRECTORY:

Section 1. amends s. 14.32, F.S., relating to the office of CIG.

Section 2. amends s. 20.055, F.S., relating to agency inspectors general.

Section 3. amends s. 20.121, F.S., relating to the Department of Financial Services.

Section 4. amends s. 215.44, F.S., relating to the SBA.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

The bill may have an indeterminate fiscal impact on state agencies if staff members employed with the OIGs are not currently included in the Selected Exempt Service or if agency inspectors general are not currently included in the Senior Management Service.

According to the Auditor General, because the SBA is being added to the definition of “state agency” in s. 20.055, F.S., the Auditor General will be required to conduct a quality assessment review of the SBA’s internal audit activity once every three years. The Auditor General estimates that additional staffing costs related to 120 hours of audit effort will be incurred every three years to conduct the assessment.³⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

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 require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2017, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the budget information an agency inspector general must include in his or her annual report by requiring the inclusion of any increase or decrease in allocations or expenditures rather than an increase or decrease of 10 percent or more; and
- Specified that the SBA has sole authority to remove the agency’s inspector general.

³⁰ Auditor General Bill Analysis for HB 1283, March 15, 2017 (on file with Oversight, Transparency & Administration Subcommittee staff).

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.