

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1470

INTRODUCER: Senator Simmons

SUBJECT: Agency Inspectors General

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>Ferrin</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1470 prohibits an agency from offering a bonus on work performance in an inspector general contract or agreement. The bill also prohibits the Florida Housing Finance Corporation from offering a bonus on work performance in an inspector general contract or agreement.

II. Present Situation:

Chief Inspector General

Section 14.32, F.S., creates the Office of Chief Inspector General in the Executive Office of the Governor. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.¹ The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor and serves as the inspector general for the Executive Office of the Governor.² Some of the duties of the Chief Inspector General include:

- Initiating investigations, recommending policies, and carrying out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government;
- Investigating and examining records of any agency under the direct supervision of the Governor, and coordinating complaint-handling activities with the agencies;
- Coordinating the activities of the Whistle-blower's Act³ and maintaining the whistle-blower's hotline;
- Acting as liaison and monitoring the activities of the inspectors general in the agencies under the Governor's jurisdiction; and
- Conducting special investigations and management reviews at the request of the Governor.⁴

¹ Section 14.32(1), F.S.

² *Id.*

³ The Whistle-blower's Act can be found in ss. 112.3187-112.31895, F.S.

⁴ Section 14.32(2), F.S.

The Chief Inspector General also has various duties relating to public-private partnerships, including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, and monitoring contract compliance.⁵

Agency Inspectors General

Duties

Section 20.055, F.S., requires each state agency⁶ of state government to have an Office of Inspector General (OIG). The OIG is created to provide a focal point of accountability efforts within the agency.⁷ Each agency inspector general is responsible for the following:⁸

- 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 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;
- Informing and recommending corrective action to the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General about fraud, abuses, deficiencies relating to programs and operations administered or financed by the state agency, and reporting on progress made in implementing corrective action;
- Ensuring effective coordination and cooperation 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.

⁵ Section 14.32(3), F.S.

⁶ Section 20.055(1)(d), F.S., defines the term “state agency” as “each department created pursuant to this chapter 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 Agency for State Technology, the Office of Early Learning, and the state courts system.”

⁷ Section 20.055(2), F.S.

⁸ *Id.*

In carrying out the investigative duties and responsibilities, the inspector general initiates, conducts, supervises, and coordinates investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.⁹

Each inspector general must submit an annual report on its activities to the agency head,¹⁰ and provide any written complaints about the operations of the inspector general.¹¹ Audit plans and reports are submitted to the Auditor General.¹²

Appointment

Section 20.055(3)(a), F.S., governs appointment of inspectors general. For state agencies under the jurisdiction of the Governor and Cabinet, the inspector general is appointed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general is appointed by the Chief Inspector General. The agency head or Chief Inspector General is required to notify the Governor in writing of their intent to hire the inspector general at least 7 days prior to an offer of employment. Inspectors general are appointed without regard to political affiliation.¹³

Removal

Section 20.055(3)(c), F.S., governs removal of inspectors general. For agencies under the jurisdiction of the Governor and Cabinet, inspectors general may be removed by the agency head. For agencies under the jurisdiction of the Governor, the inspector general may only be removed from office by the Chief Inspector General for cause, including concerns regarding performance, malfeasance, misfeasance, misconduct, or failure to carry out his or her duties. At least 21 days before removal, the Chief Inspector General must notify the Governor in writing of his or her intention to remove an inspector general. For state agencies under the jurisdiction of the Governor and Cabinet, the agency head shall notify the Governor and Cabinet in writing of his or her intention to remove the inspector general at least 21 days before the removal. If the inspector general disagrees with the removal, the inspector general may present objections in writing to the Governor within the 21-day period.

Internal Audits

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency.¹⁴ 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.¹⁵ If the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.¹⁶

⁹ Section 20.055(7), F.S.

¹⁰ Section 20.055(8), F.S.

¹¹ Section 20.055(9), F.S. For agencies under the jurisdiction of the Governor, the inspector general must provide the complaint to the Chief Inspector General.

¹² Section 20.055(6)(f)-(i), F.S.

¹³ Section 20.055(3)(a), 1., F.S.

¹⁴ Section 20.055(6), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC), a public corporation administratively housed within the Department of Economic Opportunity,¹⁷ is the state's affordable housing finance agency. As such, the FHFC is responsible for increasing the amount of affordable housing available to individuals and families by stimulating investment of private capital and encouraging public and private sector housing partnerships. To accomplish this, the FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing and to assist first-time homebuyers.¹⁸

The FHFC is authorized to employ an inspector general, who is appointed by the corporation's executive director, with the advice and consent of the corporation's nine-member board of directors.¹⁹ The inspector general is charged with performing the same duties outlined above for inspectors general of other state agencies.²⁰

Bonus Payments

Section 110.1245(2), F.S., requires state agencies to pay employees bonuses from funds authorized by the Legislature in an appropriation specifically for bonuses. Each agency is required to develop a plan²¹ for awarding lump-sum bonuses, which must be submitted no later than September 15 of each year and approved by the Office of Policy and Budget in the Executive Office of the Governor. To be eligible for a bonus, employees must meet specified eligibility criteria.²² No more than 35 percent of an agency's total authorized positions can receive a bonus.²³

Section 215.425(3), F.S., provides that any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:

- Base the award of a bonus on work performance;
- Describe the performance standards and evaluation process by which a bonus will be awarded;
- Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and
- Consider all employees for the bonus.

III. Effect of Proposed Changes:

Section 1 amends s. 20.055, F.S., to prohibit a state agency, effective July 1, 2017, that enters into an employment agreement, or renewal or renegotiation of an existing contract or employment agreement, with an inspector general or deputy inspector general from offering a

¹⁷ Section 420.504(1), F.S.

¹⁸ See ss. 420.502 and 420.507, F.S.

¹⁹ Section 420.506(2), F.S.

²⁰ *Id.*

²¹ Section 110.1245(2), F.S.

²² Section 110.245(2)(b), F.S.

²³ Section 110.1245(2)(f), F.S.

bonus on work performance in the contract or agreement. The awarding of such a bonus is also prohibited.

Section 2 amends s. 420.506, F.S., to prohibit the FHFC, effective July 1, 2017, from entering into an employment agreement, or renewal or renegotiation of an existing contract or employment agreement, with an inspector general or deputy inspector general that offers a bonus on work performance in the contract or agreement. The awarding of such a bonus is also prohibited.

Section 3 provides an effective date of upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill may have a positive effect on agency expenditures because agencies will no longer be permitted to provide bonuses to inspectors general or deputy inspectors general. If the inspector general or deputy inspector general of an agency or the FHFC was a hired employee and not under a contract or an employment agreement, the provisions of SB 1470 prohibiting bonuses might not be applicable to such employees.²⁴ In addition, if an agency offered employees of an agency bonus payments, the prohibition of inspectors

²⁴ Florida Housing Finance Corporation, *2017 Legislative Bill Analysis HB 207* (March 2, 2017) (Copy on file with the Senate Governmental Oversight and Accountability Committee).

general and deputy inspectors general from being eligible to receive and from receiving such payments would appear to violate ss. 110.1245(2) and 215.425(3), F.S.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 20.055 and 420.506 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁵ Florida Agency for Health Care Administration, *2017 Legislative Bill Analysis HB 207* (January 18, 2017)(Copy on file with the Senate Governmental Oversight and Accountability Committee).