

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 Governmental Oversight and Accountability

BILL: SB 596

INTRODUCER: Senator Martin

SUBJECT: Board of Governors of the State University System

DATE: March 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bouck</u>	<u>Bouck</u>	<u>HE</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 596 expands the authority of the Office of Inspector General (OIG) within the Board of Governors (BOG) of the State University System to:

- Issue and serve subpoenas and subpoenas duces tecum, for the BOG or all state universities, to compel the appearance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium.
- Require or authorize a person to file a written statement, under oath if required, as to all the facts and circumstances concerning the matter to be audited, examined, or investigated.

The bill specifies that, in the event of noncompliance with a subpoena, the OIG may petition the appropriate circuit court for an order requiring the subpoenaed person to appear and testify and to produce documents, reports, answers, records, accounts, or other data as specified in the subpoena.

The bill is not expected to have any impact on state or local government revenues or expenditures.

The bill takes effect on July 1, 2023.

II. Present Situation:

Board of Governors

The State University System (SUS) is composed of 12 public universities. Each constituent university is administered by a board of trustees, and the Board of Governors (BOG) is responsible to operate, regulate, control, and be fully responsible for the management of the

whole SUS.¹ Fourteen of the 17 members of the BOG are appointed by the Governor and confirmed by the Senate.² While retaining its constitution authority, the BOG also has the rights and privileges of an executive department.³

For each constituent university, the BOG, is responsible for cost-effective policy decisions appropriate to the university's mission, the implementation and maintenance of high-quality education programs within law, the measurement of performance, the reporting of information, and the provision of input regarding state policy, budgeting, and education standards.⁴

Office of Inspector General

Office of the Chief Inspector General

The Office of Chief Inspector General in the Executive Office of the Governor is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.⁵ In order to carry out its investigatory powers, the Chief Inspector General may, among other powers:

- Issue and serve subpoenas and subpoenas duces tecum, for agencies under the jurisdiction of the Governor, to compel the attendance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium.
- Petition the circuit court of the county, in the event of noncompliance with a subpoena, for an order requiring the subpoenaed person to appear and testify and to produce documents, reports, answers, records, accounts, or other data as specified in the subpoena.⁶

State Inspectors General

An office of inspector general is established in each state agency⁷ to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government.⁸ Agency inspector general duties include:

- Assessing agency performance measures and standards, and evaluating agency actions to improve performance.
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency; and
- Conducting, supervising, or coordinating activities to prevent and detect fraud and abuse in agency programs and operations.⁹

¹ FLA. CONST., art. IX, s. 7.

² *Id.*

³ Section 20.155(1), F.S.

⁴ Section 1001.706(1), F.S.

⁵ Section 14.32(1), F.S.

⁶ Section 14.32(5), F.S.

⁷ "State agency" means the Executive Office of the Governor, Department of State, the Department of Legal Affairs, the Department of Financial Services, the Department of Agriculture and Consumer Services, the Department of the Lottery, 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 Florida Gaming Control Commission, and the state courts system. Section 20.055(1)(d), F.S.

⁸ Section 20.055(2), F.S.

⁹ Section 20.055(2), F.S.

Board of Governors Office of the Inspector General

The Office of the Inspector General (office) and Director of Compliance for the BOG, established in 2007, provides leadership and coordination of audit, investigative, and compliance activities for the BOG Office and generally promotes activities that ensure accountability, financial integrity, and efficiency as required by law.¹⁰ If the BOG determines that a state university board of trustees is unwilling or unable to address substantiated allegations made by any person relating to waste, fraud, or financial mismanagement, the office must conduct, coordinate, or request investigations into substantiated allegations made by any person relating to waste, fraud, or financial mismanagement within a state university. The office is required to have access to all information and personnel necessary to perform its duties and retains all the powers, duties, and responsibilities authorized for all state inspectors general.¹¹

Subpoenas and Subpoenas Duces Tecum

A “subpoena” is a writ or order commanding a person to appear before a court or other tribunal, subject to a penalty for failing to comply.¹² A “subpoena duces tecum” is a process by which the court, at the instance of a party, commands a witness to produce at trial some document or paper over which the witness has possession or control, and that is pertinent to the issues of a pending controversy.¹³ It is available to a defendant in a criminal case as a matter of right, and it operates to bring into the trial court any material evidence shown to be available and capable of being used by the defendant in aid of a defense.¹⁴

A number of state agencies and other state entities have the authority to issue subpoenas and subpoena. Such agencies include the:

- Standing, select committees, or subcommittees of the Legislature (generally through the authority of the President of the Senate or Speaker of the House of Representatives).
- Office of the Chief Inspector General
- Department of Financial Services
- Office of Financial Regulation of the Financial Services Commission
- Department of Legal Affairs
- Department of Agriculture and Consumer Services
- Department of Revenue
- Florida Elections Commission
- Department of Highway Safety and Motor Vehicles
- Florida state courts
- Florida grand juries
- Florida Department of Law Enforcement
- Florida State Attorney's Office

¹⁰ State University System of Florida, *Inspector General*, <https://www.flbog.edu/about-us/inspector-general/> (last visited Mar. 3, 23).

¹¹ Section 20.155(5), F.S.

¹² SUBPOENA, Black's Law Dictionary (11th ed. 2019).

¹³ 24 Fla. Jur 2d Evidence and Witnesses § 535, citing *State v. Smith*, 139 So. 794 (1932).

¹⁴ 24 Fla. Jur 2d Evidence and Witnesses § 535, citing *State ex rel. Brown v. Dewell*, 123 Fla. 785, 167 So. 687 (1936).

- Florida Commission on Ethics
- Florida Commission on Offender Review

Report on Investigation into Unauthorized Use of Funds for Fixed Capital Outlay

In 2018, the Auditor General conducted an operational audit of the University of Central Florida (UCF), which revealed likely findings including the misuse of Education and General (E&G)¹⁵ carryforward¹⁶ funds for construction of a new academic building in violation of s. 216.292(5), F.S., and BOG Regulation 9.007. The BOG subsequently assigned its Inspector General to work with the Auditor General's office on resolution of the matter. The House of Representatives initiated an investigation delegated to the Public Integrity and Ethics Committee.¹⁷

The investigation found that UCF improperly transferred as much as \$85 million of E&G carryforward funds to university construction accounts for unauthorized uses, and failed to properly disclose the unspent E&G transfers. The committee also found that, in the BOG investigation, the BOG Inspector General's office lacked adequate investigative tools and resources to exercise the robust investigative role intended by the inspector general statutes. The final report of the House committee recommended that, if requested by the BOG, consideration should be given to provide the BOG Inspector General with subpoena powers to mirror those of the state Office of the Chief Inspector General.¹⁸

III. Effect of Proposed Changes:

The bill modifies s. 20.155, F.S., to expand the authority of the Office of Inspector General (OIG) within the Board of Governors (BOG) of the State University System.

In order to carry out its powers and duties, the bill authorizes the OIG to:

- Issue and serve subpoenas and subpoenas duces tecum, for the BOG or all state universities, to compel the appearance of witnesses and the production of documents, reports, answers, records, accounts, and other data in any medium.
- Require or authorize a person to file a written statement, under oath if required, as to all the facts and circumstances concerning the matter to be audited, examined, or investigated.

¹⁵ The Education and General (E&G) budget consists of State appropriated General Revenue, Educational Enhancement (Lottery) funding, and Student Tuition and Matriculation payments. E&G funds are used for general instruction, research, public service, plant operations and maintenance, student services, libraries, administrative support, and other enrollment-related and stand-alone operations of the university. State University System of Florida, *Glossary of Budget and Finance Terms*, available at https://www.flbog.edu/wp-content/uploads/0292_1187_9017_8.8.3-BUD-09b-SUS_Glossary_2019-02-07.pdf.

¹⁶ "Carryforward" funds are the accumulated ending Education and General (E&G) fund balance, used for unfunded enrollment growth, potential budget reductions, operations, or prior year encumbrances. Carryforward funds cannot be used for new construction. *Id.*

¹⁷ Florida House of Representatives, Public Integrity & Ethics Committee, *Report on Investigation into Unauthorized Use of Appropriated Funds for Fixed Capital Outlay Projects at the University of Central Florida* (March 14, 2019), available at https://www.flbog.edu/wp-content/uploads/0292_1186_9083_7.6.2-AUD_6b_Public-Integrity-Ethics-Committee-UCF-Investigation.pdf.

¹⁸ *Id.*

The bill specifies that, in the event of noncompliance with a subpoena, the OIG may petition the circuit court of the county in which the person subpoenaed resides or has his or her principal place of business for an order requiring the subpoenaed person to appear and testify and to produce documents, reports, answers, records, accounts, or other data as specified in the subpoena.

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is not expected to impact state or local government revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 20.155 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.