

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 165 Agency Inspectors General

SPONSOR(S): Government Efficiency & Accountability Council and Bean

TIED BILLS: IDEN./SIM. BILLS: SB 498

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Government Efficiency & Accountability Council</u>	<u>12 Y, 0 N, As CS</u>	<u>De La Paz/Dykes</u>	<u>Cooper</u>
2) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

CS/HB 165 requires each IG, at the conclusion of any audit of a program or contract that involves an entity contracting with the state, to submit preliminary findings and recommendations to that entity. The entity must be advised that they may submit a written response to the adverse findings within 20 working days. Similarly, the bill requires each IG, at the conclusion of an investigation that involves an entity contracting with the state, or an individual substantially affected, to submit its findings to the entity or affected individual. The entity or individual must be advised that they may submit a written response to the adverse findings within 20 days. Responses to adverse findings and the IG's rebuttal, if any, are to be included in the final IG report.

CS/HB 165 further requires each IG to provide to the agency head all written complaints concerning the duties or responsibilities of the office of the inspector general received from the subjects of investigations who are individuals substantially affected or entities contracting with the state. In addition, for agencies under the Governor's jurisdiction, the agency IG must report to the CIG (chief inspector general) all written complaints or alleged misconduct concerning the office of the IG or its employees.

The bill does not appear to have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases government by adding additional responsibilities to each agency IG.

B. EFFECT OF PROPOSED CHANGES:

Current situation

Agency Inspectors General

Section 20.055 (2), F.S., establishes the Office of the Inspector General (OIG) in each state agency to promote accountability, integrity, and efficiency in government. Each IG is appointed, supervised, and removed by their respective agency head. The major responsibilities of the OIG include investigations, audits, and reviews of state agency programs and activities.

Section 20.055 (6), F.S., states that investigations are designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. Accordingly, the following duties are performed by OIG:

- Receive complaints and coordinate all activities of the agency as required by the Whistleblower's Act pursuant to ss. 112.3187-112.31895, F.S.
- Receive and consider the complaints which 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 IG deems appropriate.
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the IG 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 IG or the IG's office. This shall include freedom from any interference with investigations and timely access to records and other sources of information.
- Submit in a timely fashion final reports on investigations conducted by the IG to the agency head, except for whistle-blower's investigations, which shall be conducted and reported pursuant to s. 112.3189, F.S.

Audits are independent appraisals designed to examine and evaluate agency programs and activities. An inherent objective when performing audits is to review and evaluate internal controls necessary to ensure fiscal accountability. 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.

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.

Section 20.055(5)(d), F.S., provides that 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 tentative findings. Such response and the inspector general's rebuttal to the response must be included in the final audit report. The inspector general must submit the final report to the agency head and to the Auditor General.

After audit reports are issued, a follow-up review is performed six months later to determine the extent of corrective actions implemented by management. Audits may be classified as either financial, compliance, performance, or data and information security.

Chief Inspector General

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

- Undertaking investigations and recommending policies designed to deter, detect, prevent, and eradicate fraud, waste, abuse, mismanagement, and misconduct in government;
- Investigating any administrative action of any agency under the direct supervision of the Governor;
- Examining the records and reports of any agency under the supervision of the Governor;
- Coordinating complaint-handling activities with agencies;
- Coordinating the activities of the Whistle-blower's Act pursuant to ch. 112, F.S., and maintaining the Whistle-blower's hotline to receive complaints and information concerning the possible violation of statutory 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;
- Working 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;
- Acting as liaison with outside agencies and the Federal Government to promote accountability, integrity, and efficiency in state government;
- Acting as liaison and monitoring the activities of the inspectors general in the agencies under the Governor's jurisdiction;
- Reviewing, evaluating, and monitoring the policies, practices, and operations of the Executive Office of the Governor; and
- Conducting special investigations and management reviews at the request of the Governor.

The Council on State Agency Inspectors General

On January 26, 2005, the Office of the Inspector General of the Florida Department of Children and Families (DCF) released its report on investigation 2004-0080. The report contained four allegations, which were deemed supported, about actions taken by the executive director of Hillsborough Kids, Inc. On April 29, 2005, the Secretary of DCF requested that the CIG conduct an independent review of the

2004-0080 investigation. The CIG Report on Case# 200504290005 was released on July 28, 2005, and determined that the DCF report contained findings without sufficient evidence to support the allegations that the executive director violated any law, rule, regulation, or policy. The CIG report also made recommendations specific to procedures in the Office of the Inspector General of DCF.

Spurred largely by this series of events, the Legislature during the 2006 Regular Session created the Council on State Agency Inspectors General (council) at s. 14.235, F.S., for the purpose of developing recommendations relating to the creation of an independent review process for investigations and audits conducted by state agency inspectors general. The council consisted of the CIG and inspector generals from the Office of the Attorney General, Agency for Workforce Innovation, Department of Business and Professional Regulation, and Fish and Wildlife Conservation Commission. Section 14.235(7), F.S., required that the review process developed and recommended by the council must:

- offer entities contracting with state agencies and individuals substantially affected by the findings, conclusions, or recommendations a meaningful opportunity to challenge in writing the findings, conclusions, and recommendations contained in a state agency inspector general's final report;
- specifically identify the entities and individuals entitled to submit a response, and identify the circumstances under which the entity's response must be attached to the state agency inspector general's final report;
- provide a hearing process entitling entities contracting with state agencies and individuals substantially affected by the findings, conclusions, or recommendations with an opportunity to present to the CIG any additional material relevant to the state agency inspector general's final report. The review process must permit the CIG to independently investigate the state agency inspector general's report and the original investigation; and
- identify ancillary issues including public records concerns, special conditions for whistle-blower's investigations, and exemptions for specific categories of audits or investigations.

The Association of Inspectors General

The Association of Inspectors General (association) is a nonprofit organization that “seeks to foster and promote public accountability and integrity in the general areas of prevention, examination, investigation, audit, detection, elimination and prosecution of fraud, waste and abuse, through policy research and analysis; standardization of practices, policies, conduct and ethics; encouragement of professional development by providing and sponsoring educational programs; and the establishment of professional qualifications, certifications, and licensing.”

The association publishes General Principles and Standards for Offices of Inspector General (standards); the most recent revision is dated May 2004. The standards published by the association include:

- Statement of Principles
- Quality Standards for Offices
- Quality Standards for Investigations
- Quality Standards for Inspections, Evaluations, and Reviews
- Quality Standards for Audits

The association states in the introduction to the standards that offices of inspector general adopt the standards for their use with a statement that they are adopted "insofar as they do not conflict with statute, regulation, executive order, or other policy of this office."

Effect of Proposed Changes

CS/HB 165 requires each IG, at the conclusion of any audit of a program or contract that involves an entity contracting with the state, to submit preliminary findings and recommendations to that entity. The entity must be advised that they may submit a written response to the adverse findings within 20 working days. Similarly, the bill requires each IG, at the conclusion of an investigation that involves an entity contracting with the state, or an individual substantially affected, to submit its findings to the entity or affected individual. The entity or individual must be advised that they may submit a written response to the adverse findings within 20 days. Responses to adverse findings and the IG's rebuttal, if any, are to be included in the final IG report.

CS/HB 165 further requires each IG to provide to the agency head all written complaints concerning the duties or responsibilities of the office of the inspector general received from the subjects of investigations who are individuals substantially affected or entities contracting with the state. In addition, for agencies under the Governor's jurisdiction, the agency IG must report to the CIG (chief inspector general) all written complaints or alleged misconduct concerning the office of the IG or its employees. The bill provides new definitions to subsection (1) for "individuals substantially affected" and "entities contracting with the state."

CS/HB 165 requires agency inspectors general to comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General. The bill further requires that when a director of auditing, and not the agency inspector general, performs an audit, the audit must be in accordance with current International Standards for the Professional Practice of Internal Auditing as published by the Institute of Internal Auditors, Inc.

In addition, the bill requires that the CIG be notified in writing before the hiring or termination of an agency inspector general, for those agencies under the direction of the Governor.

The bill also provides that when inspector general investigative reports or audit reports are provided to the Public Service Commission, they must be distributed to all members of the commission.

C. SECTION DIRECTORY:

Section 1. Amends s. 20.055, F.S., to require agency inspectors general to fulfill certain duties and responsibilities.

Section 2. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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 because this bill does not appear to require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

This bill adds fairness to due process.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At the meeting of the Government Efficiency and Accountability Council held on April 9, 2008, the council adopted a strike-all amendment which removed the provisions of the bill resulting in a fiscal impact. The amendment:

- removed the bill's additional responsibilities of the CIG to receive complaints filed against agency inspectors general and investigate them;
- removed the requirement that the CIG develop policies and procedures for reviewing complaints filed against an agency inspector general or its employees.
- removed definitions of terms corresponding to the review process removed from the bill;
- removed the requirement that an agency reimburse attorney's fees incurred by complainants;
- amended the days allowed for an entity contracting with the state or an individual substantially affected to respond to an investigative IG report from 10 days to 20 days to make it conform to the similar provision relating to responding to IG audit reports.

In addition, two amendments to the strike-all amendment were adopted which require that when inspector general investigative reports or audit reports are provided to the Public Service Commission, they must be distributed to all members of the commission.