

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 General Government Appropriations Committee

BILL: CS/SB 1020

INTRODUCER: General Government Appropriations Committee and Senator Aronberg

SUBJECT: Agency Inspectors General

DATE: April 6, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	Favorable
2.	Hawkins/Pigott	DeLoach	GA	Fav/CS
3.	_____	_____	WPSC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill increases from 7 to 14 days the notice required to be given by an agency to the Governor and Chief Inspector General before hiring an agency inspector general and clarifies that each inspector general serves at the pleasure of the agency head.

The bill also provides that an agency head may remove an inspector general from office for just cause shown, with the approval of the Governor or a majority vote of the Cabinet, and increases from 7 to 14 days the notice required when an agency head intends to remove an inspector general.

The bill also requires each state agency to include in its legislative budget request for the 2011-2012 fiscal year, the transfer of positions and funding for the inspector general's office to a new and separate budget entity within each agency.

This bill substantially amends section 20.055, Florida Statutes.

II. Present Situation:

Agency Inspectors General

Section 20.055, F.S., requires that each state agency¹ created in the organizational structure of state government have an inspector general office contained within the agency. The office is

¹ For purposes of this section, the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation, the Office of Financial Regulation, the Public Service

created to provide a focal point of accountability efforts within the agency. Each office is responsible for the following:

- Advising in the development of performance standards, their validation, and the compliance of agency activities with them.
- Assessing the reliability and validity of information provided by the agency on performance measures and standards.
- Improving agency performance.
- 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 that state 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, fraud, and abuse.
- Coordinating agency-specific audit activities with those of peer federal and state agencies.
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact.
- Maintaining a balance among audit, investigative, and other accounting activities of the agency.
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.²

Inspectors general are appointed by the agency head. For agencies under the direction of the Governor, the appointment must be made after notifying the Governor and the Chief Inspector General in writing, at least 7 days prior to an offer of employment, of the agency head's intention to hire the inspector general.³

Inspectors general may be removed only by the agency head. For agencies under the direction of the Governor, the agency head must notify the Governor and the Chief Inspector General, in writing, of the intention to terminate the inspector general, at least 7 days prior to the removal. For state agencies under the direction of the Governor and Cabinet, the agency head must notify the Governor and Cabinet, in writing, of the intention to terminate the inspector general, at least 7 days prior to the removal.⁴

Inspectors general must possess minimum educational and experience qualifications,⁵ and the investigations they conduct must adhere to specific internal 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.

Commission, the Board of Governors of the State University System, and the state courts system are considered "state agencies," in addition to the departments created in Ch. 20, F.S.

² Section 20.055(2), F.S.

³ Section 20.055(3)(a), F.S.

⁴ Section 20.055(3)(c), F.S.

⁵ Section 20.055(4), F.S.

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. 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 shall 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.

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. All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.⁶

Audit work papers and reports must be public records to the extent that they do not include information that has been made confidential and exempt from the provisions of s. 119.07(1), F.S., or information protected under s. 112.3187(5), F.S., of the Whistle-blower's Act.⁷

The inspector general must have access to any records, data, and other information of the state agency he or she deems necessary to carry out his or her duties. The inspector general is also authorized to request such information or assistance as may be necessary from the state agency or from any federal, state, or local government entity.⁸

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.

The Auditor General, in connection with the independent post-audit of the same agency, must give appropriate consideration to internal audit reports and the resolution of findings therein. The Legislative Auditing Committee may inquire into the reasons or justifications for failure of the agency head to correct the deficiencies reported in internal audits that are also reported by the Auditor General and must take appropriate action.⁹

The inspector general must monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability. No later than six months after the Auditor General or the Office of Program Policy Analysis and Government Accountability publishes a report on the state agency, the inspector general must provide a written response to the agency head on the

⁶ Section 20.055(5)(a), F.S.

⁷ Section 20.055(5)(b), F.S.

⁸ Section 20.055(5)(c), F.S.

⁹ Section 20.055(5)(g), F.S.

status of corrective actions taken. The inspector general must file a copy of such response with the Legislative Auditing Committee.¹⁰

The inspector general must develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include post-audit samplings of payments and accounts. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands related to claims against the state, and examining, auditing, adjusting, and settling accounts relating to those indebted to the state, may utilize audits performed by the inspectors general and internal auditors. For state agencies under the Governor, the audit plans shall be submitted to the Governor's Chief Inspector General. The plan must be submitted to the agency head for approval, and a copy of the approved plan must be submitted to the Auditor General.¹¹

In carrying out its 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 audit 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.
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.¹²

Each inspector general must submit a yearly report on its activities to the agency head.¹³

¹⁰ Section 20.055(5)(h), F.S.

¹¹ Section 20.055(5)(i), F.S.

¹² Section 20.055(6), F.S.

¹³ Section 20.055(7), F.S.

III. Effect of Proposed Changes:

The bill amends s. 20.055(3), F.S., to increase from 7 to 14 days the notice to be given by an agency to the Governor and Chief Inspector General before hiring an agency inspector general, and clarifies that each inspector general serves at the pleasure of the agency head.

The bill provides that an agency head may remove an inspector general from office for just cause shown, with the approval of the Governor or a majority vote of the Cabinet, and increases from 7 to 14 days the notice required when an agency head intends to remove an inspector general.

The bill also requires each state agency to include in its legislative budget request for the 2011-2012 fiscal year, the transfer of positions and funding for the inspector general's office to a new and separate budget entity within each agency.

The bill provides and effective date of July 1, 2010.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not specify the factors which constitute “just cause” sufficient to remove an inspector general from office. Black’s Law Dictionary defines “just cause” as “a cause outside legal cause, which must be based on reasonable grounds, and there must be a fair and honest cause or reason, regulated by good faith Legitimate cause; legal or lawful ground for action; such reasons as will suffice in law to justify the action taken.”¹⁴ It is unclear whether a just cause standard would permit an agency head to remove an inspector general to hire another qualified candidate.

The bill requires an elected constitutional officer, such as the Attorney General, Chief Financial Officer, or Commissioner of Agriculture, to obtain the approval of the Governor or Cabinet before removing an agency inspector general. This approval process appears to be removed enough from those officer’s constitutional duties to avoid a constitutional issue.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by General Government Appropriations on April 6, 2010:

This committee substitute requires that each state agency include, in its legislative budget request for the 2011-2012 fiscal year, the transfer of positions and funding for the inspector general’s office to a new and separate budget entity within each agency.

- B. **Amendments:**

None.

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

¹⁴ Black's Law Dictionary (5th Ed.) at p. 775.