

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 Governmental Oversight and Accountability Committee

BILL: SB 1450

INTRODUCER: Senator Gelber

SUBJECT: Agency Inspectors General

DATE: March 12, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	Pre-meeting
2.			WPSC	
3.			RC	
4.				
5.				
6.				

I. Summary:

The bill makes the Legislative Branch’s Office of the Auditor General responsible for the appointment and supervision of Executive Branch agency inspectors general.

This bill substantially amends s. 20.055, Florida Statutes.

II. Present Situation:

Prior to the 1969 governmental reorganization of state government, the post-audit function resided in the executive branch. Since that time the Legislative Branch has housed that post-financial audit responsibility in the Office of the Auditor General. A successive addition was the creation of a separate policy analysis unit in that office called the Office of Program Policy Analysis and Governmental Accountability (OPPAGA).

The Auditor General

The Auditor General appointed in s. 11.42, F.S., is the auditor that is required by s. 2, Art. III of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature. The Auditor General, before entering upon the duties of the office, must take the oath of office required of state officers by the State Constitution. The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature. At the time of appointment, the Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at least 10

years and must have had not less than 10 years' experience in an accounting or auditing related field.

To carry out her or his duties the Auditor General must make all spending decisions within the annual operating budget approved by the President of the Senate and the Speaker of the House of Representatives. The Auditor General must employ qualified persons necessary for the efficient operation of the Auditor General's office and must fix their duties and compensation and, with the approval of the President of the Senate and the Speaker of the House of Representatives, must adopt and administer a uniform personnel, job classification, and pay plan for employees. No person may be employed as a financial auditor who does not possess the qualifications to take the examination for a certificate as certified public accountant under the laws of Florida, and no person may be employed or retained as legal adviser, on either a full-time or a part-time basis, who is not a member of The Florida Bar.

The headquarters of the Auditor General are at the state capital, but to facilitate auditing and to eliminate unnecessary traveling, the Auditor General may establish field offices located outside the state capital. The Auditor General must be provided with adequate quarters to carry out the position's functions in the state capital and in other areas of the state.

All payrolls and vouchers for the operations of the Auditor General's office must be submitted to the Chief Financial Officer for payment. The Auditor General may make and enforce reasonable rules and regulations necessary to facilitate authorized audits.

No officer or salaried employee of the Office of the Auditor General may serve as the representative of any political party or on any executive committee or other governing body thereof; serve as an executive, officer, or employee of any political party committee, organization, or association; or be engaged on behalf of any candidate for public office in the solicitation of votes or other activities in behalf of such candidacy. Neither the Auditor General nor any employee of the Auditor General may become a candidate for election to public office unless she or he first resigns from office or employment. No officer or salaried employee of the Auditor General may actively engage in any other business or profession or be otherwise employed without the prior written permission of the Auditor General.

Sections 11.25(1) and 11.26, F.S., do not apply to the Auditor General.

Agency Inspectors General

Section 20.055, F.S. establishes an inspector general function in each state agency¹ in the executive branch of state government. A Chief Inspector General is also established in the Executive Office of the Governor. The inspector general function, like its predecessor federal counterpart, is designed as a quality assurance and accountability entity in much the same fashion as the internal audit functions complements the post-audit duties of an external auditor.

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 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.

Each inspector general 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.

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

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.

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

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.

¹⁰ Section 20.055(5)(h), F.S.

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

III. Effect of Proposed Changes:

Section 1. Section 20.055, F.S., is amended to transfer from each state agency head to the Auditor General the appointment and supervision of agency inspectors general.

Section 2. The act takes effect July 1, 2010.

¹¹ Section 20.055(5)(i), F.S.

¹² Section 20.055(6), F.S.

¹³ Section 20.055(7), F.S.

Other Potential Implications:

While there is no direct separation of powers impediment as the bill does not confer powers of one branch on those of another, there may be some practical compromises to the ability of the Auditor General to stay at arm's length from involvement in agency operations. This is discussed at greater length under the Related Issues section below.

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:

Agency inspectors general are classified as senior managers and governed by the separate salary and benefits package for that personnel classification. Upon their migration to the Legislative Branch, they will receive a similar, but not identical package of employer-provided benefits. The principal differences will involve the nature and incidence of payment for disability insurance, dental insurance, and leave credits for earned or extended absences. Non-managerial employees in different position classifications affected by this transfer may realize relatively greater benefits as they pay a portion of their benefits with their current, non-legislative employers.

The positions will also migrate to a separate classification and pay system. The Legislative Branch participates in the multi-employer *PeopleFirst* system for benefits only and there will be alterations to the accumulation, calculation, and processing of leave and time sheets for the affected positions. The Legislative Branch uses a different software system for such calculations.

Because the positions will move into a different personnel system, the affected employees will have the opportunity to transfer their accumulated and vested leave or to receive payment in cash by the sending agency. Section 2.243, *Joint Policies and Procedures of the Presiding Officers* of the Florida Legislature governs the employment relationship of employees in that branch. Additionally the Office of the Auditor General maintains its own separate classification system consistent with the *Joint Policies*. The payroll liability for transferred leave will be assumed by the receiving agency.

Unstated in the bill but, nonetheless, a practical consequence of the organizational changes will be the effect of indirect cost allocations for the affected positions. The total amount of overhead costs will be deducted from the sending agencies and credited to the Office of the Auditor General to be reallocated.

VI. Technical Deficiencies:

None.

VII. Related Issues:

While there is no nominal separation of powers conflict posed by the bill, there will be an erosion to the independence of the Auditor General. Professional auditing standards require the post-audit function to operate independently from the organizations and activities that are audited. To the extent that the legislative inspectors general become involved in the ordinary operating activities of the agencies – and the existing law on this subject reprinted on lines 64 through 69 of the bill contemplates operating responsibilities on waste, fraud and abuse that “eradicate” what has been discovered - the independence of the Auditor General, as their nominal supervisory authority, will be compromised.

Governmental auditing standards, established by the congressional Government Accountability Office (GAO) require institutional and personal auditor independence. Popularly known as “Yellow Book” standards, these principles are adopted as a code of professional practice for government auditors and supplement complementary non-governmental standards promulgated by the American Institute of Certified Public Accountants.

VIII. Additional Information:

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

None.

B. Amendments:

None.