

CHAPTER 2015-173

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 371

An act relating to agency inspectors general; amending s. 20.055, F.S.; revising definitions; providing additional hiring requirements, employment qualifications, and terms of employment for inspectors general and staff; establishing the duty of specified persons and entities with respect to cooperation with an inspector general's official duties; requiring contracts and other specified documents to contain a statement regarding compliance with an inspector general's official duties; amending s. 14.32, F.S.; authorizing the Chief Inspector General to retain legal counsel and issue and enforce subpoenas under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 20.055, Florida Statutes, is amended to read:

20.055 Agency inspectors general.—

(1) As used in this section, the term:

(a) “Agency head” means the Governor, a Cabinet officer, or a secretary or executive director as those terms are defined in s. 20.03, the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.

(b) “Entities contracting with the state” means for-profit and not-for-profit organizations or businesses that have a legal existence, such as corporations or partnerships, as opposed to natural persons, which have entered into a relationship with a state agency to provide for consideration certain goods or services to the state agency or on behalf of the state agency. The relationship may be evidenced by payment by warrant or purchasing card, contract, purchase order, provider agreement, or other such mutually agreed upon relationship. The term does not apply to entities that are the subject of audits or investigations conducted pursuant to ss. 112.3187-112.31895 or s. 409.913 or which are otherwise confidential and exempt under s. 119.07.

(c) “Individuals substantially affected” means natural persons who have established a real and sufficiently immediate injury in fact due to the findings, conclusions, or recommendations of a final report of a state agency inspector general, who are the subject of the audit or investigation, and who

do not have or are not currently afforded an existing right to an independent review process. The term does not apply to employees of the state, including career service, probationary, other personal service, Selected Exempt Service, and Senior Management Service employees; former employees of the state if the final report of the state agency inspector general relates to matters arising during a former employee's term of state employment; or persons who are the subject of audits or investigations conducted pursuant to ss. 112.3187-112.31895 or s. 409.913 or which are otherwise confidential and exempt under s. 119.07.

(d) "State agency" means 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.

(2) An The office of inspector general is established in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. It is the duty and responsibility of each inspector general, with respect to the state agency in which the office is established, to:

(a) Advise in the development of performance measures, standards, and procedures for the evaluation of state agency programs.

(b) Assess the reliability and validity of the information provided by the state agency on performance measures and standards, and make recommendations for improvement, if necessary, before submission of such information pursuant to s. 216.1827.

(c) Review the actions taken by the state agency to improve program performance and meet program standards and make recommendations for improvement, if necessary.

(d) Provide direction for, supervise, and coordinate audits, investigations, and management reviews relating to the programs and operations of the state agency, except that when the inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall conduct such audits.

(e) Conduct, supervise, or coordinate 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.

(f) Keep the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General informed concerning fraud,

abuses, and deficiencies relating to programs and operations administered or financed by the state agency, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action.

(g) Ensure effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication.

(h) Review, as appropriate, rules relating to the programs and operations of such state agency and make recommendations concerning their impact.

(i) Ensure that an appropriate balance is maintained between audit, investigative, and other accountability activities.

(j) Comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.

(3)(a)1. For state agencies under the jurisdiction of the Cabinet or the Governor and Cabinet, the inspector general shall be appointed by the agency head. For state agencies under the jurisdiction of the Governor, the inspector general shall be appointed by the Chief Inspector General. The agency head or Chief Inspector General shall notify the Governor in writing of his or her intention to hire the inspector general at least 7 days before an offer of employment. The inspector general shall be appointed without regard to political affiliation.

2. Within 60 days after a vacancy or anticipated vacancy in the position of inspector general, the agency head or, for agencies under the jurisdiction of the Governor, the Chief Inspector General, shall initiate a national search for an inspector general and shall set the salary of the inspector general. In the event of a vacancy in the position of inspector general, the agency head or, for agencies under the jurisdiction of the Governor, the Chief Inspector General, may appoint other office of inspector general management personnel as interim inspector general until such time as a successor inspector general is appointed.

3. A former or current elected official may not be appointed inspector general within 5 years after the end of such individual's period of service. This restriction does not prohibit the reappointment of a current inspector general.

(b) The inspector general shall report to and be under the general supervision of the agency head and is not subject to supervision by any other employee of the state agency in which the office is established. For state agencies under the jurisdiction of the Governor, the inspector general shall be under the general supervision of the agency head for administrative purposes, shall report to the Chief Inspector General, and may hire and

remove staff within the office of the inspector general in consultation with the Chief Inspector General but independently of the agency.

(c) For state agencies under the jurisdiction of the Cabinet or the Governor and Cabinet, the inspector general may be removed from office by the agency head. For state 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 under this section. The Chief Inspector General shall notify the Governor in writing of his or her intention to remove the inspector general at least 21 days before the removal. 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.

(d) The Governor, the Governor and Cabinet, the agency head, or agency staff may not prevent or prohibit the inspector general from initiating, carrying out, or completing any audit or investigation.

(4)(a) To ensure that state agency audits are performed in accordance with applicable auditing standards, the inspector general or the director of auditing within the inspector general's office shall possess the following qualifications:

1.(a) A bachelor's degree from an accredited college or university with a major in accounting, or with a major in business which includes five courses in accounting, and 5 years of experience as an internal auditor or independent postauditor, electronic data processing auditor, accountant, or any combination thereof. The experience shall at a minimum consist of audits of units of government or private business enterprises, operating for profit or not for profit; or

2.(b) A master's degree in accounting, business administration, or public administration from an accredited college or university and 4 years of experience as required in subparagraph 1. paragraph (a); or

3.(c) A certified public accountant license issued pursuant to chapter 473 or a certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and 4 years of experience as required in subparagraph 1. paragraph (a).

(b) For agencies under the jurisdiction of the Governor, the inspector general shall be selected on the basis of integrity, leadership capability, and experience in accounting, auditing, financial analysis, law, management analysis, program evaluation, public administration, investigation, criminal justice administration, or other closely related field. The inspector general is subject to a level 2 background screening pursuant to chapter 435. The

inspector general shall have a 4-year degree from an accredited institution of higher learning or have at least 5 years of experience in at least one of the following areas:

1. Inspector general.
2. Supervisory experience in an office of inspector general or an investigative public agency similar to an office of inspector general.
3. Local, state, or federal law enforcement officer.
4. Local, state, or federal court judge.
5. Senior-level auditor or comptroller.
6. The administration and management of complex audits and investigations.
7. Managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or other organizations.

An advanced degree in law, accounting, public administration, or other relevant field may substitute for 1 year of required experience.

(c) The inspector general shall possess at appointment, or obtain within the first year after appointment, a certification from the Association of Inspectors General as a certified inspector general. The inspector general must have one or more other professional certifications, such as certified inspector general investigator, certified inspector general auditor, certified public accountant, certified internal auditor, certified governmental financial manager, or certified fraud examiner, certified financial crimes investigator or other related certification, or be a licensed attorney.

(d) The inspector general may not hold, or be a candidate for, an elective office of the state or a municipality, county, or other political subdivision of the state while inspector general, and a current officer or employee of an office of inspector general may not hold, or be a candidate for, an elective office of the state or a municipality, county, or other political subdivision of the state. The inspector general may not hold office in a political party or political committee. An employee of an office of inspector general may not hold office in a political party or political committee while employed in the office of inspector general.

(5) It is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. Beginning July 1, 2015, each contract, bid, proposal, and application or solicitation for a contract shall contain a statement that the corporation, partnership, or person understands and will comply with this subsection.

~~(6)~~(5) In carrying out the auditing duties and responsibilities of this act, each inspector general shall review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general shall conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The scope and assignment of the audits shall be determined by the inspector general; however, the agency head may at any time request the inspector general to perform an audit of a special program, function, or organizational unit. The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the qualifications specified in subsection (4), the director of auditing shall perform the functions listed in this subsection.

(a) Such audits shall be conducted in accordance with the current International Standards for the Professional Practice of Internal Auditing as 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.

(b) Audit workpapers and reports shall be public records to the extent that they do not include information which has been made confidential and exempt from the provisions of s. 119.07(1) pursuant to law. However, when the inspector general or a member of the staff receives from an individual a complaint or information that falls within the definition provided in s. 112.3187(5), the name or identity of the individual may not be disclosed to anyone else without the written consent of the individual, unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation.

(c) The inspector general and the staff shall 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 may also request such information or assistance as may be necessary from the state agency or from any federal, state, or local government entity.

(d) At the conclusion of each audit, the inspector general shall submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who shall respond to any adverse findings within 20 working days after receipt of the preliminary findings. Such response and the inspector general's rebuttal to the response shall be included in the final audit report.

(e) At the conclusion of an audit in which the subject of the audit is a specific entity contracting with the state or an individual substantially affected, if the audit is not confidential or otherwise exempt from disclosure by law, the inspector general shall, consistent with s. 119.07(1), submit the findings to the entity contracting with the state or the individual substantially affected, who shall be advised in writing that they may submit a

written response within 20 working days after receipt of the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report.

(f) The inspector general shall submit the final report to the agency head, the Auditor General, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(g) The Auditor General, in connection with the independent postaudit of the same agency pursuant to s. 11.45, shall 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 shall take appropriate action.

(h) The inspector general shall 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 6 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 shall provide a written response to the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General on the status of corrective actions taken. The inspector general shall file a copy of such response with the Legislative Auditing Committee.

(i) The inspector general shall develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include postaudit samplings of payments and accounts. The plan shall show the individual audits to be conducted during each year and related resources to be devoted to the respective audits. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands pursuant to s. 17.03(1), and examining, auditing, adjusting, and settling accounts pursuant to s. 17.04, may use audits performed by the inspectors general and internal auditors. For state agencies under the jurisdiction of the Governor, the audit plans shall be submitted to the Chief Inspector General. The plan shall be submitted to the agency head for approval. A copy of the approved plan shall be submitted to the Auditor General.

~~(7)~~(6) In carrying out the investigative duties and responsibilities specified in this section, each inspector general shall 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 shall:

(a) Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act pursuant to ss. 112.3187-112.31895.

(b) 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 inspector general deems appropriate.

(c) Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the inspector general has reasonable grounds to believe there has been a violation of criminal law.

(d) 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 shall include freedom from any interference with investigations and timely access to records and other sources of information.

(e) At the conclusion of each investigation in which the subject of the investigation is a specific entity contracting with the state or an individual substantially affected as defined by this section, and if the investigation is not confidential or otherwise exempt from disclosure by law, the inspector general shall, consistent with s. 119.07(1), submit findings to the subject that is a specific entity contracting with the state or an individual substantially affected, who shall be advised in writing that they may submit a written response within 20 working days after receipt of the findings. Such response and the inspector general's rebuttal to the response, if any, shall be included in the final investigative report.

(f) Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head, except for whistle-blower's investigations, which shall be conducted and reported pursuant to s. 112.3189.

~~(8)(7)~~(a) Except as provided in paragraph (b), each inspector general shall, not later than September 30 of each year, prepare an annual report summarizing the activities of the office during the immediately preceding state fiscal year.

(b) The inspector general of the Florida Housing Finance Corporation shall, not later than 90 days after the end of each fiscal year, prepare an annual report summarizing the activities of the office of inspector general during the immediately preceding fiscal year.

(c) The final reports prepared pursuant to paragraphs (a) and (b) shall be provided to the heads of the respective agencies and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. Such reports shall include, but need not be limited to:

1. A description of activities relating to the development, assessment, and validation of performance measures.
2. A description of significant abuses and deficiencies relating to the administration of programs and operations of the agency disclosed by

investigations, audits, reviews, or other activities during the reporting period.

3. A description of the recommendations for corrective action made by the inspector general during the reporting period with respect to significant problems, abuses, or deficiencies identified.

4. The identification of each significant recommendation described in previous annual reports on which corrective action has not been completed.

5. A summary of each audit and investigation completed during the reporting period.

~~(9)~~(8) The inspector general in each state agency shall provide to the agency head, upon receipt, all written complaints concerning the duties and responsibilities in this section or any allegation of misconduct related to the office of the inspector general or its employees, if received from subjects of audits or investigations who are individuals substantially affected or entities contracting with the state, as defined in this section. For state agencies under the jurisdiction of the Governor, the inspector general shall also provide the complaint to the Chief Inspector General.

~~(10)~~(9) Each agency inspector general shall, to the extent both necessary and practicable, include on his or her staff individuals with electronic data processing auditing experience.

Section 2. Subsection (5) is added to section 14.32, Florida Statutes, to read:

14.32 Office of Chief Inspector General.—

(5) In exercising authority under this section, the Chief Inspector General or his or her designee may:

(a) Hire or retain legal counsel.

(b) 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.

(c) Require or permit a person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be audited, examined, or investigated.

In the event of noncompliance with a subpoena issued pursuant to this subsection, the Chief Inspector General 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.

Section 3. This act shall take effect July 1, 2015.

Approved by the Governor June 16, 2015.

Filed in Office Secretary of State June 16, 2015.