

BILL ANALYSIS

Senate Research Center
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S.B. 1651
By: Staples
Government Organization
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Government has a sacred trust to guard taxpayer dollars and maintain the highest standard of integrity, impartiality, and conduct. Further, contractors for state services have a fiduciary responsibility to prevent, detect, and report fraud. Executive Order RP 36 was developed as the first system-wide approach to fight fraud in all state agencies. It required all agencies to develop an anti fraud program.

H.B. 2292, 78th Legislature, Regular Session, 2003, established the office of the inspector general (OIG) at the Health and Human Services Commission. The OIG has been successful in recovering money, prosecuting those who commit fraud, and reviewing certain programs.

As proposed, S.B. 1651 establishes the office of the inspector general at nine state agencies for the purposes of investigation, audit, and performance review to deter and identify fraud, abuse, and other illegal acts; provide increased accountability, integrity, and oversight; and assist in improving state agency operations. Offices of inspectors general will enable state agencies to root out fraud, waste, and abuse in agencies entrusted with large amounts of taxpayer dollars, such as the unemployment insurance program and the health care system.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Building and Procurement Commission, the Texas Commission on Environmental Quality, the Texas Department of Criminal Justice, the Texas Department of Insurance, the Texas Department of Transportation, the Texas Education Agency, the Texas Higher Education Coordinating Board, the Texas Workers' Compensation Commission, and the Texas Workforce Commission in SECTION 3 (Section 2115.164, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. SHORT TITLE. Provides that this Act may be cited as the Texas Inspector General Act.

SECTION 2. PURPOSE. Sets forth the purpose of this Act.

SECTION 3. OFFICE OF INSPECTOR GENERAL. Amends Subtitle C, Title 10, Government Code, by adding Chapter 2115, as follows.

CHAPTER 2115. TEXAS INSPECTORS GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2115.001. DEFINITIONS. Defines "agency," "inspector general," "presiding officer," and "review."

Sec. 2115.002. APPLICABILITY. Sets forth to which state agencies this chapter applies.

[Reserves Sections 2115.003-2115.050 for expansion.]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 2115.051. CREATION OF OFFICE OF INSPECTOR GENERAL. Creates the office of inspector general at each agency to perform certain functions.

Sec. 2115.052. APPOINTMENT. Requires a governing body of an agency to appoint an inspector general to serve in that position within the agency. Provides that an inspector general serves at the pleasure of the governing body of the inspector general's agency.

Sec. 2115.053. QUALIFICATIONS. Requires the agency, in appointing a person as inspector general, to consider certain criteria and give preference to a person certified as an inspector general.

Sec. 2115.054. ORGANIZATION. Requires an inspector general to establish an organizational structure for the inspector general's office that is appropriate to carrying out the responsibilities and functions of the office.

Sec. 2115.055. INDEPENDENCE OF OFFICE. (a) Provides that an inspector general operates independently from the agency in which the inspector general serves.

(b) Prohibits an executive or legislative state agency from impairing or prohibiting an inspector general from initiating or completing a review.

[Reserves Sections 2115.056-2115.100 for expansion.]

SUBCHAPTER C. PERSONNEL

Sec. 2115.101. EMPLOYEES. Authorizes an inspector general to employ personnel as necessary to administer the inspector general's office.

Sec. 2115.102. EXPERTS. (a) Authorizes an inspector general to employ or contract with certified public accountants, management consultants, or other professional experts necessary to independently perform the functions of the inspector general's office.

(b) Provides that Chapter 2254 (Professional and Consulting Services) does not apply to a person employed or contracted with under this section.

Sec. 2115.103. PEACE OFFICERS. Authorizes an inspector general to employ peace officers.

[Reserves Sections 2115.104-2115.150 for expansion.]

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF INSPECTOR GENERAL

Sec. 2115.151. GENERAL AUTHORITY. Authorizes an inspector general to perform all activities necessary to carry out the functions under this chapter.

Sec. 2115.152. OPERATION OF OFFICE. Authorizes an inspector general to establish policies and procedures to guide the operation of the inspector general's office.

Sec. 2115.153. PROFESSIONAL STANDARDS. Requires a review conducted by an office to conform to professional standards and best practices for offices of inspector general.

Sec. 2115.154. GENERAL REVIEW AUTHORITY. (a) Authorizes an inspector general to monitor and evaluate the activities and records of individuals with contracts, procurements, grants, or agreements with the agency and any activity or operation of the agency.

(b) Authorizes an inspector general to conduct criminal, civil, and administrative reviews related to the course and scope of the duties of the inspector general.

(c) Authorizes an inspector general to review the efficiency and effectiveness of the operations and functions of the inspector general's agency and conduct reviews of the agency's performance measurement system.

Sec. 2115.155. ACCESS UNRESTRICTED. (a) Authorizes an inspector general to obtain full and unrestricted access to all offices, employees, records, reports, contracts, correspondence, and any other information or materials of the inspector general's agency or any other organization or individual involved with the agency.

(b) Provides that the authority provided by this section supersedes any claim of privilege.

(c) Authorizes an inspector general to attend any meeting of the inspector general's agency, including a closed meeting.

Sec. 2115.156. COOPERATION REQUIRED. Authorizes an inspector general, as necessary for a review under this chapter, to request and compel from any governmental entity in this state cooperation, assistance, services, and data.

Sec. 2115.157. EMPLOYEE REPORTS. Authorizes an inspector general to require employees at the inspector general's agency to report to the agency's office information regarding certain misconduct.

Sec. 2115.158. COMPLAINTS. Authorizes an inspector general to receive and investigate complaints on the inspector general's own initiative or from any source concerning alleged abuse, fraud, or a service deficiency in the operation and maintenance of a facility.

Sec. 2115.159. SUBPOENA. (a) Authorizes an inspector general to subpoena witnesses or any records or other documents necessary for a review.

(b) Sets forth the procedure the inspector general may use to compel compliance with the subpoena.

Sec. 2115.160. INTERNAL AUDITOR. (a) Authorizes an inspector general to exercise the powers granted to an internal auditor under Chapter 2102 (Internal Auditing).

(b) Provides that Section 2102.007(a)(1) (requiring an internal auditor to report directly to the state agency's governing board or the administrator of the state agency) does not apply to an internal auditor of the agency. Requires the internal auditor of the agency under Chapter 2102 to report to the inspector general.

Sec. 2115.161. COOPERATION WITH LAW ENFORCEMENT OFFICIALS AND OTHER ENTITIES. (a) Authorizes an inspector general to provide information and evidence relating to criminal acts to the appropriate law enforcement officials.

(b) Authorizes an inspector general to refer matters for further civil, criminal, and administrative action to appropriate administrative and prosecutorial agencies, including the attorney general.

(c) Authorizes an inspector general to conduct a joint review or other project with other appropriate agencies.

Sec. 2115.162. PREVENTION. Authorizes an inspector general to engage in prevention activities, including the review of legislation, rules, policies, procedures, transactions, training, and education.

Sec. 2115.163. REMEDIATION; MONITORING. (a) Authorizes an inspector general to recommend remedial actions to be taken by the inspector general's agency to overcome or correct a deficiency or inefficiency identified by the inspector general's office.

(b) Authorizes an inspector general to monitor implementation of recommendations made by the inspector general's office and other audit agencies for compliance.

Sec. 2115.164. RULEMAKING AUTHORITY. (a) Requires an agency to adopt rules to respond to reports and referrals from the agency's inspector general, including sanctions for violations.

(b) Requires the rules to include due process for referrals and findings that might result in administrative penalties.

[Reserves Sections 2115.165-2115.200 for expansion.]

SUBCHAPTER E. OVERSIGHT OF INSPECTOR GENERAL; REPORTS

Sec. 2115.201. ORGANIZATION PLACEMENT. Provides that an inspector general reports to the presiding officer of the inspector general's agency.

Sec. 2115.202. ANNUAL EVALUATION. Requires an agency's presiding officer to conduct an annual evaluation of the agency's inspector general.

Sec. 2115.203. ALLEGATIONS OF MISCONDUCT AGAINST PRESIDING OFFICER. Requires the inspector general, if allegations of misconduct by a presiding officer result in an investigation by an inspector general, to report to the governor during the investigation until the report is completed and the investigation is closed without a finding.

Sec. 2115.204. REPORTING OFFICE ACTIVITIES. Sets forth the officials and agencies to which an inspector general is required to report the findings of the inspector general's office.

Sec. 2115.205. FLAGRANT VIOLATIONS; IMMEDIATE REPORT. Requires an inspector general to immediately report to the presiding officer of the inspector general's agency and the governor's general counsel a particularly serious or flagrant problem relating to the administration of a program or operation of the agency or interference with an inspector general operation.

[Reserves Sections 2115.206-2115.250 for expansion.]

SUBCHAPTER F. PUBLIC RECORDS; EXCEPTIONS

Sec. 2115.251. INFORMATION CONFIDENTIAL. (a) Provides that, subject to certain provisions, all information and material compiled by an inspector general during an investigation or audit is confidential and not subject to certain disclosures.

(b) Authorizes information, as the inspector general determines appropriate, relating to an investigation or audit to be disclosed to a law enforcement agency or the attorney general.

(c) Prohibits a person that receives information under Subsection (b) from disclosing the information except to the extent that disclosure is consistent with the authorizes purposes for which the person first obtained the information.

Sec. 2115.252. FINAL AUDIT AND INVESTIGATION REPORTS. (a) Provides that an inspector general's final investigation and audit reports are subject to disclosure under Chapter 552 (Public Information).

(b) Provides that all working papers and other documents related to compiling the final audit and investigation reports remain confidential.

[Reserves Sections 2115.253-2115.300 for expansion.]

SUBCHAPTER G. FINANCIAL PROVISIONS

Sec. 2115.301. BUDGET. Requires the inspector general to submit a budget to the presiding officer of the inspector general's agency.

Sec. 2115.302. COSTS. (a) Authorizes an inspector general to submit a budget to the presiding officer of the inspector general's agency.

(b) Authorizes an inspector general to cooperate with appropriate administrative and prosecutorial agencies in recovering costs incurred under this chapter from nongovernmental entities, including contractors or individuals involved in violations of state and federal rules, statutes, or abusive or willful misconduct.

SECTION 4. INTERNAL AUDITOR. Amends Section 2102.007(a) to create an exception, as provided by Chapter 2115, to the requirement that the internal auditor report directly to the state agency's governing board or the administrator of the state agency.

SECTION 5. EFFECTIVE DATE. Effective date: September 1, 2005.