

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1651
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Government Organization
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Committee Report (Substituted)

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. 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.

C.S.S.B. 1651 establishes nine new offices of inspector general at various state agencies and sets forth criteria and requirements at all ten agencies for the purposes of investigation 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 Health and Human Services Commission, 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 1 (Section 2115.162, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. 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 TO CERTAIN STATE AGENCIES. 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 conduct investigations, inspections, and other reviews.

Sec. 2115.052. APPOINTMENT; TERM. Requires the governor to appoint an inspector general to serve within each agency. Provides that an inspector general serves a two-year term expiring February 1 of each odd-numbered year.

Sec. 2115.053. QUALIFICATIONS. Requires the governor, in appointing a person as inspector general, to consider certain criteria. Provides that additional recommended qualifications include certain licenses or certificates.

Sec. 2115.054. CONFLICT OF INTEREST. Prohibits an inspector general from serving as an ex officio member on the governing body of a governmental entity. Prohibits an inspector general from having a financial interest in the transactions of the inspector general's agency.

Sec. 2115.055. 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. Requires the office to be established within the agency using existing agency resources dedicated to the investigation of fraud, abuse, and employee misconduct.

Sec. 2115.056. INDEPENDENCE OF OFFICE. Provides that an inspector general operates independently from the agency in which the inspector general serves, with certain exceptions. Prohibits an executive state agency from impairing or prohibiting an inspector general from initiating or completing a review.

Sec. 2115.057. OPERATION OF OFFICE. Requires an inspector general to establish policies and procedures to guide the operation of the inspector general's office.

Sec. 2115.058. QUALITY ASSURANCE AND CONTROL. (a) Requires an inspector general to adopt procedures to ensure adequate quality control over the inspector general's work and practices and to ensure that the work of the inspector general's office meets commonly used and adopted professional standards.

(b) Requires the inspector general to implement the quality control program to guarantee that the office is structured appropriately and that the office implements policies and practices to ensure objective and accurate reviews.

Sec. 2115.059. PUBLISHING POLICIES AND PROCEDURES IN TEXAS REGISTER. Requires an inspector general to publish in the Texas Register the policies and procedures adopted under this subchapter.

[Reserves Sections 2115.060-2115.100 for expansion.]

SUBCHAPTER C. PERSONNEL

Sec. 2115.101. EMPLOYEES. Authorizes an inspector general, subject to Section 2115.055, to employ personnel as necessary to administer the inspector general's office by using existing agency resources dedicated to the investigation of fraud, abuse, and employee misconduct.

Sec. 2115.102. EXPERTS. Authorizes an inspector general, subject to Section 2115.055, to contract with certified public accountants, management consultants, or other professional experts necessary to independently perform the functions of the inspector general's office. Requires the inspector general to use existing agency resources dedicated to the investigation of fraud, abuse, and employee misconduct for this purpose.

[Reserves Sections 2115.103-2115.150 for expansion.]

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF INSPECTOR GENERAL

Sec. 2115.151. REVIEW AUTHORITY. (a) Authorizes an inspector general to evaluate any activity or operation of the inspector general's agency related to the investigation,

detection, or prevention of fraud or employee misconduct. Authorizes a review to include inquiry into certain events or practices.

(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.

Sec. 2115.152. INITIATION OF REVIEW. Authorizes an inspector general to initiate a review on the inspector general's own initiative or based on a complaint from any source concerning certain matters.

Sec. 2115.153. FACTUAL DETERMINATION OF REVIEW. Provides that an inspector general is charged solely with making a determination of the truth of a complaint based on a finding of facts and presenting those findings as provided by Subchapter E. Prohibits an inspector general from making remedial recommendations.

Sec. 2115.154. ACCESS TO INFORMATION. (a) Entitles an inspector general, in furtherance of a review conducted by the inspector general's office, to access all books, accounts, reports, vouchers, or other information from any entity receiving money from the inspector general's agency, including confidential information and electronic data. Prohibits the inspector general from accessing data or other information the release of which is restricted under federal law unless the appropriate federal agency approves the release.

(b) Requires an inspector general, to the extent that the performance of the powers and duties of the inspector general is not impeded, to make reasonable efforts to coordinate requests for access under Subsection (a) so as not to hinder the daily operations of the entity.

Sec. 2115.155. COOPERATION REQUIRED. (a) Authorizes the inspector general, in furtherance of a review conducted by the inspector general's office, to require the assistance of certain persons employed by or associated with the inspector general's agency.

(b) Requires an inspector general, to the extent that the performance of the powers and duties of the inspector general is not impeded, to make reasonable efforts to coordinate requests for access under Subsection (a) so as not to hinder the daily operations of the entity.

Sec. 2115.156. 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. 2115.157. SUBPOENAS. (a) Authorizes a district attorney or the attorney general, on request of an inspector general, to issue a subpoena to compel attendance of a relevant witness or the production, for inspection or copying, of relevant evidence in connection with a review conducted under this chapter.

(b) Authorizes a subpoena to be served personally or by certified mail.

(c) Authorizes the inspector general, acting through the attorney general, if a person fails to comply with a subpoena, to file suit to enforce the subpoena in district court in this state.

(d) Requires the court, on finding that good cause exists for issuing the subpoena, to order the person to comply with the subpoena. Authorizes the court to hold in contempt a person who fails to obey the court order.

(e) Requires the inspector general to pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the inspector general may charge for copies of its records.

(f) Provides that the reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103 (Expenses of Witness or Deponent).

Sec. 2115.158. INTERNAL AUDITOR. (a) Defines "internal auditor."

(b) Requires the internal auditor for the agency to provide the inspector general with a copy of the agency's internal audit plan to assist in the coordination of efforts between the inspector general and the internal auditor and limit duplication of effort regarding reviews by the inspector general and internal auditor.

(c) Requires the internal auditor to provide to the inspector general all final audit reports concerning audits of any part or division of the agency; contract, procurement or grant; and program conducted by the agency.

Sec. 2115.159. COOPERATION WITH LAW ENFORCEMENT OFFICIALS AND OTHER ENTITIES. (a) Authorizes an inspector general to provide information and evidence relating to criminal acts to the state auditor's office and 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 the inspector general to enter into a memorandum of understanding with a law enforcement or prosecutorial agency, including the office of the attorney general, to assist in conducting a review under this chapter.

Sec. 2115.160. COOPERATION AND COORDINATION WITH STATE AUDITOR.

(a) Authorizes the state auditor, on request of the inspector general, to provide appropriate information or other assistance to the inspector general, as determined by the state auditor.

(b) Authorizes an inspector general to meet with the state auditor's office to coordinate a review conducted under this chapter, share information, or schedule work plans.

(c) Entitles the state auditor to access all information maintained by an inspector general, including certain information.

(d) Provides that any information obtained or provided by the state auditor under this section is confidential and not subject to disclosure under Chapter 552 (Public Information).

Sec. 2115.161. PREVENTION. Authorizes an inspector general to provide training or other education regarding the prevention of fraud, waste, or abuse at the inspector general's agency. Requires the training or education to be approved by the presiding officer.

Sec. 2115.162. RULEMAKING. (a) Authorizes 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 2115.163-2115.200 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. Authorizes the presiding officer, as part of this evaluation, to request that the attorney general evaluate the policies and practices of the inspector general to ensure that the inspector general complies with professional standards and nationally accepted policies and practices.

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

Sec. 2115.204. PERIODIC REPORTING TO STATE AUDITOR REQUIRED. Requires an inspector general to timely inform the state auditor of the initiation of a review and the ongoing status of each review.

Sec. 2115.205. REPORTING OFFICE FINDINGS. Sets forth the officials and agencies to which an inspector general is required to report the findings of the inspector general's office.

Sec. 2115.206. FLAGRANT VIOLATIONS; IMMEDIATE REPORT. Requires an inspector general to immediately report to the presiding officer of the inspector general's agency, the governor's general counsel, and the state auditor 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 2115.207-2115.250 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 review is confidential and not subject to certain disclosures.

(b) Authorizes information, as the inspector general determines appropriate, relating to a review to be disclosed to a law enforcement agency, the attorney general, or the state auditor's office.

(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 REVIEW REPORTS. (a) Requires an inspector general to prepare a final report for each review conducted under this chapter. Sets forth the required contents of the report.

(b) Provides that an inspector general's final review reports are subject to disclosure under Chapter 552 (Public Information).

(c) Provides that all working papers and other documents related to compiling the final review reports remain confidential.

[Reserves Sections 2115.253-2115.300 for expansion.]

SUBCHAPTER G. STATE AUDITOR AND INSPECTOR GENERAL INDEPENDENCE

Sec. 2115.301. STATE AUDITOR AUDITS, INVESTIGATIONS, AND ACCESS TO INFORMATION NOT IMPAIRED. Provides that this chapter or other law related to the

operation of an inspector general does not prohibit the state auditor from conducting an audit or an investigation or other review or from having full and complete access to all records and other information, including witnesses and electronic data, that the state auditor considers necessary for the audit or the investigation or other review.

Sec. 2005.302. ACCESS TO STATE AUDITOR INFORMATION NOT IMPAIRED. Provides that except as authorized by the state auditor, this chapter or other law related to the operation of an inspector general does not permit an inspector general or any other person to access any working papers, including any documents, notes, and other information, collected or maintained by the state auditor's office.

Sec. 2005.303. AUTHORITY OF STATE AUDITOR TO CONDUCT AUDITS NOT IMPAIRED. Provides that this chapter or other law related to the operation of an inspector general does not take precedence over the authority of the state auditor to conduct an audit under Chapter 321 or other law.

[Reserves Sections 2115.304-2115.350 for expansion.]

SUBCHAPTER H. FINANCIAL PROVISIONS

Sec. 2115.351. BUDGET. Requires the inspector general to submit a budget to the presiding officer of the inspector general's agency.

Sec. 2115.352. COSTS. (a) Requires an inspector general to maintain information regarding the cost of reviews.

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

SECTION 2. Amends Sections 531.102(a), (b), and (h), Government Code, as follows:

(a) Defines "office." Deletes existing text providing that the Health and Human Services Commission's (HHSC) office of inspector general is responsible for investigation of fraud and abuse.

(b) Requires the inspector general for HHSC, rather than HHSC in consultation with the inspector general, to set clear objectives, priorities, and performance standards for the office of the inspector general. Deletes the requirement that the objectives, priorities, and performance standards emphasize certain activities. Makes nonsubstantive changes.

(h) Deletes existing text authorizing the office of inspector general to recommend policies promoting economical and efficient administration for certain funds and the prevention and detection of fraud and abuse in administration of these funds.

SECTION 3. Repealer: Sections 531.102(a-1), (d), and (e) (Office of Inspector General), and 531.1021 (Subpoenas), Government Code.

SECTION 4. (a) Provides that the repeal by this Act of certain provisions of Section 531.102, Government Code, does not affect the validity of a complaint, investigation, or other proceeding initiated under that section before the effective date of this Act. Provides that a complaint, investigation, or other proceeding initiated under that section is continued in accordance with the changes in law made by this Act.

(b) Provides that the repeal by this Act of Section 531.1021, Government Code, does not affect the validity of a subpoena issued under that section before the effective date of this Act. Provides that a subpoena issued under that section before the effective date of this Act is governed by the law that existed when the subpoena was issued, and the former law is continued in effect for that purpose.

SECTION 5. (a) Provides that the repeal by this Act of Section 531.102(a-1), Government Code, does not affect the entitlement of the person appointed as inspector general under that subsection to serve out the remainder of the person's term and carry out the functions of an inspector general in a certain manner.

(b) Provides that this section does not prohibit a person described by Subsection (a) of this section from being appointed under Chapter 2115 if the person has the qualifications required under that chapter.

(c) Requires the governor, as soon as possible after the term under Section 531.102 expires or after the office otherwise becomes vacant at an earlier date, to appoint an inspector general for HHSC under Chapter 2115 to an initial term expiring February 1, 2007.

SECTION 6. Requires the governor, as soon as possible after the effective date of this Act, to appoint an inspector general for each agency other than HHSC listed in Section 2115.002, Government Code, as added by this Act, to an initial term expiring February 1, 2007.

SECTION 7. EFFECTIVE DATE. Effective date: September 1, 2005.