

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>Munoz/Tallman</u>	LAST UPDATED <u>3/3/23</u>
	ORIGINAL DATE <u>2/7/23</u>
SHORT TITLE <u>State Inspectors General Act</u>	BILL NUMBER <u>Senate Bill 201</u>
	ANALYST <u>Eckberg</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
ECECD		\$125.0	\$125.0	\$250.0	Recurring	Operating/General Fund
HED	\$300.0	\$350.0	\$350.0	\$1,000.0	Recurring	Operating/General Fund
DOH		\$266.3	\$290.3	\$556.6	Recurring	Operating/General Fund
PED		\$750.0	\$787.5	\$1,537.5	Recurring	Operating/General Fund
Other Agencies without Existing OIGs		Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Corrections Department (NMCD)
 Department of Transportation (NMDOT)
 Higher Education Department (HED)
 Early Childhood Education and Care Department (ECECD)
 Human Services Department (HSD)
 Children, Youth and Families Department (CYFD)
 Department of Health (DOH)
 Public Education Department (PED)
 Office of the State Auditor (OSA)

No Response Received

Department of Finance and Administration (DFA)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Senate Bill 201

The bill creates the State Inspectors General Act, mandating independent and objective Offices of Inspectors General (OIG) within 10 cabinet-level executive branch departments to perform internal and compliance audits and conduct investigations. The state agencies in which such offices would be mandated are the Children, Youth and Families Department (CYFD), Corrections Department (NMCD), Department of Health (DOH), Higher Education Department (HED), Human Services Department (HSD), Public Education Department (PED), Department of Finance and Administration (DFA), Department of Transportation (NMDOT), Taxation and Revenue Department, and Early Childhood Education and Care Department (ECECD).

Each cabinet secretary would appoint an inspector general as a classified employee, and the offices would report directly to the secretary, a process that has been identified as a best practice. The offices would have unrestricted access to records, data, reports, contacts, memoranda, correspondence, and any other information necessary to carry out the duties of the office.

The offices will coordinate activities with the State Auditor, LFC, and the Medicaid Fraud and Elder Abuse Division of the Attorney General, as applicable. The bill also creates the Government Accountability Coordinating Council (GACC), comprising the state auditor, attorney general, inspectors general of the 10 departments, and the director of LFC. The council will select a chair and a vice chair for a term of two years.

Each OIG will submit an annual work plan to the cabinet secretary, GACC, and LFC. Annual reports and results of audits and investigations will be provided to the cabinet secretary, GACC, and LFC. The OIG, the departments, GACC, or LFC shall not disclose information in reports made confidential by law or exempt from the Inspection of Public Records Act (IPRA). The results of audits, investigations, and the annual report, not including confidential information, would be made public by posting on the department's website and other means. GACC will also review, from the nine OIGs, the annual work plans, quarterly updates, annual reports, reports on the results of investigations and audits, findings and cost savings identified, recommendations, and other reports and information from coordination with offices and agencies of the council.

The effective date of this bill is July 1, 2023.

This bill is endorsed by LFC.

FISCAL IMPLICATIONS

The bill carries no appropriation and anticipates utilization of existing staff at most designated offices; however, agencies with no existing OIG may anticipate additional operating budget impacts. On the effective date of the act, July 1, 2023, each of the 10 departments shall transfer audit and compliance functions, staff, money, records, appropriations, equipment, furniture, and other property to the department's newly created office of inspector general.

In 2022, LFC program evaluators estimated over \$4.8 million is expended at 10 state agencies with existing internal audit offices. CYFD, NMCD, HSD, DOH, NMDOT, TRD, and PED are among the agencies required to have an OIG under this bill that already have an internal audit

function of some sort. Agencies without OIGs–ECECD, DFA, and HED–will likely see additional operating expenses if they do not have existing positions that can pivot to perform OIG functions. FTE and salaries range from a low of 2 FTE at a cost of roughly \$186 thousand annually to a high of 25 FTE and annual salaries totaling roughly \$1.36 million. LFC program evaluators have also found an investment in a properly operating internal audit function should provide a return on the investment and contribute to cost savings.

ECECD provides a cost estimate as follows: “If SB201 is approved and ECECD is mandated to install an Inspector General, ECECD estimates it will cost the Agency approximately \$125.0 in General Fund for salary, benefits, supplies and equipment and overhead as funds are not appropriated in this bill to support the position.”

HED provided the following cost breakdown:

Establishment of an Office of Inspector General within the agency would require staffing to support the auditing of (7) four-year Colleges and Universities; nine (9) two-year Community Colleges; four (4) Tribal Colleges; nine (9) two-year Branch Community Colleges; and three (3) Special Schools that are geographically spread throughout New Mexico.

In order to comply with the proposed legislation, the NMHED would require the following:

Position	Pay Band	Min	Mid-Point	Max
Inspector General - AO-II State Audit Manager	Pay Band 90	\$74,962	\$97,450	\$119,939
Accountant & Auditor-O	Pay Band 60	\$37,752	\$49,078	\$60,403
Accountant & Auditor-A	Pay Band 65	\$43,954	\$57,140	\$70,326
Accountant & Auditor Supervisor	Pay Band 70	\$50,155	\$65,202	\$80,248

Additionally, operational costs for the Office of Inspector General will be necessary. These include travel costs, supplies, and equipment as well as continuing education and training mandated by Generally Accepted Government Auditing Standards (GAGAS) as required within the bill. The NMHED has not done an analysis of these costs; however, they would need to be taken into consideration in the operating budget of the department should this legislation be adopted. If this does not happen, the NMHED would not be able to create the Office of Inspector General as called for in SB201.

PED indicates the department will need an additional six staff to implement the provisions of SB201 at a projected cost of approximately \$750 thousand with salaries, benefits, and associated operating costs.

SIGNIFICANT ISSUES

The State Inspectors General Act seeks to improve the executive branch’s effectiveness to evaluate its programs and to investigate potential waste, fraud, and abuse within state agencies and other entities. Although not in statute, many executive cabinet departments carry out various government accountability functions, including internal and compliance audits and investigations, through inspector general, internal audit, and quality assurance offices. Although a number of executive cabinet departments have internal audit functions, a 2022 LFC report found these government accountability functions lack statutory guardrails, are structured in such a way that potentially

impairs independence, lack published work plans, do not coordinate their work, and sometimes do not have a positive return on investment.

The 2022 LFC *Policy Spotlight: Review of Internal Audit Functions* also found state agency OIGs and internal audit function outcomes and availability of work product to the public are inconsistent because internal audit work products vary by agency and most agencies do not make their work products publicly available. LFC staff was able to review a small sample of reports provided by OIGs and was able to see the potential benefits to having these functions. One internal report found that employees are able to drive vehicles home that contain auxiliary fuel tanks. Some of these fuel tanks were found to lack any sort of meter to measure fuel dispensed, which could lead to fuel being used for purposes other than refilling state vehicles. The internal report recommends all auxiliary fuel tanks be equipped with meters to increase accountability and reduce opportunities for waste, fraud, abuse, or misconduct and that the meters be checked regularly.

The LFC report recommends the Legislature enact legislation to institutionalize internal auditing wherever feasible to help ensure agencies are operating economically and efficiently and provide guidance on policies and procedures based on best practices, such as the following:

- Examining the feasibility of adopting an organizational structure that ensures internal audit functions are independent and objective;
- Requiring an audit charter, written policies and procedures, and work plans that are published whenever feasible;
- Ensuring internal audit functions follow generally accepted audit standards;
- Requiring reports, audits, and work plans be made public whenever feasible.

The requirements of this bill would address many of the concerns brought to light by the LFC report and will address several of the report's recommendations.

ADMINISTRATIVE IMPLICATIONS

NMDOT provided the following:

The changes in NMDOT operations would entail adding the named entities as recipients on outgoing reports that the Office of Inspector General is currently obligated to compile. Also, posting of audit reports on the NMDOT Website would be a new process, but NMDOT's Office of Inspector General already has the requisite access and this requirement could be easily implemented. As per Section 6B, the NMDOT's Office of Inspector General would report directly to the Cabinet Secretary, which has occurred in the past. Last, the addition of a Government Accountability Coordinating Council would incorporate some additional duties for the Inspector General, but time spent with this Council is anticipated to have little impact on the NMDOT Inspector General's current duties.

NMCD provided the following:

Multiple reporting responsibilities may create administrative complications. It is difficult to determine if it would require additional staffing. The potential limitless information gathering for various interim legislative committees and the LFC will likely require additional staffing needs. There is no funding mentioned in the proposed bill to pay for this additional staffing.

CYFD provided the following:

Generally, the transfer of functions between business units, and the necessary transfer of personnel, equipment, and funds which accompany those transfers, takes time and attention away from necessary activities. In the event that the government accountability coordinating council determines that CYFD quality assurance processes qualify as “audit and compliance functions”, the time and attention necessary to ensure a proper transfer will have a negative effect on performance measures related to quality assurance processes.

ECECD provided the following:

The reporting requirements alone would place significant strain on existing resources. With no appropriation attached to this bill, forming an office of inspector general will take away necessary resources for administering existing programming. In the case of ECECD, this would be especially true of Food and Nutrition and PreK, which are associated with numerous “state-funded entities” which will be falling under the inspector general’s jurisdiction to audit and investigate.

DOH provided the following:

DOH has an Office of Internal Audit (OIA), which, as the bill specifies, would be transferred to the Office of Inspector General. Duties additional to the current OIA’s are indicated for the Office of the Inspector General, including submitting an annual workplan and report, publishing the results of audits and investigations, hiring, and removing or suspending the department’s Inspector General to the proposed Government Accountability Coordinating Council, the State Auditor, and the Legislative Finance Committee. The department’s Inspector General would serve on the Government Accountability Coordinating Council.

TECHNICAL ISSUES

CYFD offered the following:

The statute states that the inspector general shall be “appointed”, but also that the inspector general shall be a “classified employee as per the Personnel Act”. As classified employees cannot be “appointed”, this is a contradiction which will need to be addressed.

HSD notes:

Under Sections 4, B, 8 and 9 the OIG would be given authority to contract and accept federal funds. These measures are incompatible with the current HSD enabling act and should be left with the OOS. Treatment throughout the proposed Bill of “confidential information: is insufficient to invoke exception to IPRA and should be detailed explicitly as IPRA exceptions. Section 7 details in appropriate addition to Chapter 2, Article 5 which covers the Legislative Finance Committee which the OIG’s would not be directly under.

ECECD provided the following:

This bill directs inspectors general to have complete unfettered access to all information, data and correspondence within a department. This could violate attorney-client privilege and unnecessarily interfere with active litigation efforts.

PED reported the following:

It is unclear if these requirements would impact the PED's responsibilities under the federal Family Educational Right and Privacy Act (FERPA) protections. Federal law prohibits sharing student information without demonstration of an **educational purpose**. (See the FERPA at 20 U.S.C. § 1232g; 34 CFR Part 99). The department does not agree the financial and related audits under SB201 would meet the test of a demonstrated education purpose and thus potentially may violate FERPA.

ALTERNATIVES

The Office of the State Auditor (OSA) expresses concerns about the ability of inspector generals to stay objective and free of conflicts of interest when they report directly to cabinet secretaries. OSA further states an employee cannot be appointed at the discretion of the cabinet secretary and also be a classified employee. To address these two issues, OSA offers, as an alternative to housing each inspector general in their respective agencies, integrating inspector generals and their functions into OSA.

NE/al/hg/rl/hg