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FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/13
 SPONSOR SRC _____ LAST UPDATED 03/12/13 HB _____
 SHORT TITLE State Inspector General Act SB 227/SRCS _____
 ANALYST Geisler/Pahl _____

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		None				N/A

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From:

Children, Youth and Families Department (CYFD)
 Department of Health (DOH)
 Human Services Department (HSD)

SUMMARY

Synopsis of Bill

The Senate Rules Committee substitute for Senate Bill 227 (SB 227) would formalize the Legislative Finance Committee's (LFC) existing program evaluation and review function in statute by establishing the Government Accountability Office (GAO) division in the LFC. The bill expands the LFC staff's authority to receive and protect confidential information, clarifies the definition of agencies subject to evaluations and outlines that the GAO staff members must be persons knowledgeable and proficient in program and performance evaluation, and research or policy analysis. The bill directs the GAO to coordinate its activities with executive offices of Inspector General, as necessary.

SB 227 also establishes the State Inspectors General Act, which establishes independent and objective evaluation units in nine executive departments and outlines their duties, responsibilities and organization. The Inspectors General Act includes requirements for each Office of Inspector General (OIG) to have the authority to conduct internal audits and audits of state-funded entities, have unrestricted access to any information needed to conduct audits and evaluations, coordinate activities with the State Auditor and Attorney General's Office, report on the department's progress on measures associated with the Accountability in Government Act and submit an

annual work plan to the department and LFC. The bill requires OIG reports be released to the LFC, Governor’s Office and the public.

FISCAL IMPLICATIONS

SB 227 does not contain an appropriation to support implementation of the Government Accountability Office division of the LFC or the State Inspectors General Act. However, because the LFC and assigned executive departments already have staff dedicated to internal audits, the agencies could meet the requirements SB 227 with existing staff; this was confirmed in agency responses from the Department of Health (DOH) and the Children, Youth and Families Department (CYFD). Based on the February staffing report from the State Personnel Office, it appears each of the nine departments has at least one staff member dedicated to internal audits and a total of 72 of those positions are filled.

Department	Authorized Positions	Filled Positions - Feb 2013	Avg. Salary	Total Salary Costs of Filled Positions
CYFD	1	1	\$77,668	\$77,688
DFA	3	3	\$71,678	\$215,035
DOC	6	3	\$52,707	\$158,122
DOH	4	2	\$48,509	\$97,017
DOT	22	21	\$49,365	\$1,036,660
HED	1	1	\$50,230	\$50,230
HSD	25	19	\$47,427	\$901,106
PED	6	5	\$63,506	\$317,531
TRD	24	17	\$46,725	\$794,333
All Identified	92	72	\$50,153	\$3,647,722

The State Inspector’s General Act within the bill allows department-level inspector general offices to accept federal funds to perform duties consistent with the Act. This could mean an increase in external funding for these accountability units.

SIGNIFICANT ISSUES

The Inspector’s General Act in SB 227 seeks to improve the executive branch’s effectiveness to evaluate their programs and to investigate potential waste, fraud and abuse within state agencies and other entities. Though 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. However, these government accountability functions often are not independent, have misdirected or insufficient effort and their work is often not coordinated or reported to the Legislature, according to past LFC staff analysis. SB 227 would create a consistent set of responsibilities for these internal auditing units including collaboration with the state accountability function. This coordination is important to maximize the use of the state’s accountability functions including the Legislative Finance Committee, which performs in-depth program evaluations, Office of State Auditor, which performs financial statement audits, and the Office of Attorney General, which performs civil/criminal investigations and prosecution, including for Medicaid.

The structure created by SB 227 appears to be similar to the federal government's structure for government accountability. The federal government enacted the Inspector General Act in 1978 to establish OIG at major federal departments to conduct audits and investigations, and report to Congress on the problems and deficiencies of various federal programs and recipients of funding, including states, government contractors, and recipients of aid payments. Federal OIGs, much like executive OIGs outlined in this bill, also report their results to the executive branch, and make their reports public. These functions compliment the Congressional Government Accountability Office, which also conducts performance evaluations and audits of executive agencies.

Inspectors General and internal audit functions are intended to improve the efficiency and effectiveness of organizations, including preventing and detecting waste, fraud and abuse of taxpayer resources. If implemented correctly, OIG activities can reduce external financial statement audit findings and even cost if the work of the internal auditor can be relied upon by the financial statement auditor for things such assurance over internal controls. According to the Institute of Internal Auditors (IIA), "Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. Internal Auditors' roles include monitoring, assessing, and analyzing organizational risk and controls; and reviewing and confirming information and compliance with policies, procedures, and laws. Working in partnership with management, internal auditors provide the board, the audit committee, and executive management assurance that risks are mitigated and that the organization's corporate governance is strong and effective. And, when there is room for improvement, internal auditors make recommendations for enhancing processes, policies, and procedures."

SB 227 appears to reflect the recommendation of the Legislative Structure and Process Study Task Force (Task Force) from the 2007 interim. The Task Force recommended that the LFC's existing program evaluation function be put into statute and that the LFC have the ability to receive confidential information. According to the Task Force final report "The Legislative Council created the Task Force to develop recommendations to help the legislature conduct its work and perform its duties more effectively." Since 1991, the LFC has conducted program evaluations and reviews (formerly called performance audits) of government entities under existing statutory authority (Section 2-5-3 NMSA 1978) which provides broad oversight authority to examine and report not only the cost, but the operation and functioning of government under the laws. The bill would establish the existing program evaluation and review function in statute.

SB 227 would require agencies to furnish the GAO with such documents, material or other information requested. Requested information that is confidential by law or exempt from public inspection under the Inspection of Public Records Act shall not be disclosed by the GAO, and penalties for improper disclosure of confidential or exempt information shall apply to the GAO's director and staff. This is consistent with most other states. According to a 2007 report by the National Conference of State Legislatures, "nearly every state legislative program evaluation office has generally unrestricted access to state and local records, including records deemed confidential by state and federal laws," *Establishing a Program Evaluation Office – Recommendations to the North Carolina General Assembly, 2007*.

The CYFD’s response noted the bill requires agency OIGs to “coordinate activities with the state auditor; the Medicaid fraud and elder abuse division of the attorney general’s office, as applicable; and the legislative finance committee”, and believes these coordination requirements will make it burdensome to receive approval to initiate and conduct audits or investigations requested by the CYFD Secretary or the Governor’s Office.

PERFORMANCE IMPLICATIONS

The LFC would continue to conduct program evaluations and reviews under existing statutory authority (Section 2-5-3 NMSA 1978). Providing full access to information would allow the LFC to more fully carry out its oversight and budget functions, while providing the necessary protections of confidential information to allow agencies to fully cooperate.

The purpose of the State Inspector General Act created executive government accountability office is to improve the overall performance of state government by undertaking audits, investigations and reviews to ensure effective and efficient operations, as well as the proper use of funding and detection of waste, fraud, and abuse.

According to a response from the DOH, SB 227 relates to the DOH FY14 Strategic Plan, Goal 6: Improve Fiscal Accountability.

ADMINISTRATIVE IMPLICATIONS

The DOH stated there may be some additional administrative burden associated with converting current internal audit teams into offices of inspector general.

OTHER SUBSTANTIVE ISSUES

Like New Mexico, most state legislatures have created specialized units that conduct research studies and evaluate state government policies and programs to help meet legislative oversight responsibilities, according to a 2008 report by the National Legislative Program Evaluation Society, a staff section of the National Conference of State Legislatures. The report states:

Among the many roles that state legislatures play—debating public policy, enacting laws, and appropriating funds—is the fundamental responsibility to oversee government operations and ensure that public services are delivered to citizens in an effective and efficient manner. This accountability role [program evaluations] is a critical part of our constitutional system of separation of powers and is essential to ensuring the trust that citizens place in government. These studies—variously called program evaluations, policy analyses, and performance audits—address whether agencies are properly managing public programs and identify ways to improve these programs and cut government costs....[and] may address varying issues, including whether agencies are following legislative intent, whether programs are well managed and are producing the desired results for citizens, and whether policy alternatives could improve operations and save taxpayer money.

According to the Human Services Department (HSD), the bill states the GAO will not disclose information that is confidential by law or release records exempt from the Inspection of Public Records Act. The HSD states they must keep certain information confidential pursuant to *federal* law or regulation, and presumes federal law will overrule any state law authorizing disclosure by an agency to the GAO of such information.

Finally, the Act requires the CYFD OIG to issue reports on the results of audits and investigations to not only the department secretaries and LFC, to make those reports available to the public. Making such findings available to the public will require redaction of confidential information in accordance with various statutory confidential requirements, which may also prove burdensome.

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