

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

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Candelaria **ORIGINAL DATE** 01/30/14
LAST UPDATED _____ **HB** _____
SHORT TITLE Create Offices Of Inspectors General, CA **SJR** 1
ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		>\$46.0*		>\$ 46.0	Nonrecurring	Election Fund
			Indeterminate	Indeterminate	Recurring	General Fund
Total			Indeterminate	>\$46.0 +Indeterminate	Non-Recurring and Recurring	Election Fund & General Fund

(Parenthesis () Indicate Expenditure Decreases) * Estimated cost of publishing the constitutional amendment.+

Companion to SB 13 State Inspectors General Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AGO)

Office of the State Auditor (OSA)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 1 proposes a constitutional amendment to add an additional section to Article V (Executive Branch), requiring the creation of Offices of Inspectors General (OIG) to be appointed and managed by the state auditor, in designated state agencies. It further states the OIGs shall be answerable to the state auditor and shall provide annual reports as required by law to the state auditor and the Legislature.

FISCAL IMPLICATIONS

Under Section 1-16-13 NMSA 1978 and the NM constitution, the SOS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The SOS is also required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. In 2012, the cost for the 2012 General Election ballots was \$46,000 per constitutional amendment. However, if the ballot size increases so it becomes longer than one page, front and

back, it would increase the cost of conducting the general election. This additional cost would come from costs associated with a longer ballot, additional time required to process individuals as they vote, and additional ballot printing systems to avoid long lines at voting convenience centers.

OSA analysis states that:

“The Legislature will have to provide a recurring appropriation to the Office of the State Auditor to carry out this function. The current operational budgetary resources of the OSA would not be sufficient to carry out the purposes of the resolution. The Legislature must also provide the necessary funding to support personnel, furniture, equipment and other resources necessary to establish offices of inspector general in the departments listed. The fiscal impact of this bill appears to be significant, but the fiscal impact is indeterminate given the resolution requires implementing legislation. It is unknown how many offices of inspectors general the Legislature would establish for ‘designated state agencies.’ It is also unknown what the specific duties of those offices would be.”

SIGNIFICANT ISSUES

SJR 1 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. Increased 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.

According to analysis of the AGO, the proposed amendment would make mandatory that which seems permissive now, being the creation of OIGs within certain executive branch agencies. AGO analysis notes no significant legal issues.

SJR 1 does not indicate what the specific duties of the Inspectors General will be. The anticipated reporting structure, with OIGs “in designated agencies” but appointed, managed and answerable to the OSA could create personnel issues.

The OSA in its analysis raises as significant issues conflicts with requirements of professional standards such as the Generally Accepted Government Auditing Standards (GAGAS) and the Public Accountancy Act with regard to the independence of both internal and external auditors that would arise from the reporting structure.

Specifically, OSA analysis states:

“State law and professional auditing and accounting standards require the State Auditor to function as an external auditor. Generally Accepted Government Auditing Standards (GAGAS), to which the State Auditor is required to adhere as an external auditor in the performance of financial audits and other attestation

engagements, require that the State Auditor and his independent auditors be free from impairments to independence and avoid the appearance of such impairments.” According to OSA analysis, “the bill’s provisions would result in the impairment of the State Auditor’s organizational independence to conduct the annual financial audits of the departments because the external audit function (the State Auditor) would be organizationally located within the reporting line of the areas under audit (the departments).”

“The bill’s requirement that the State Auditor ‘maintain’ the offices and that the offices report directly to the State Auditor also cause organizational independence problems for the internal audit function of the inspectors general. By definition, internal auditors work for the management of the audited entities, not the management of entities external to the organization. In accordance with the Institute of Internal Auditors’ Standards for the Professional Practice of Internal Auditing (which internal auditors are required to use in conjunction with GAGAS), it is vital that offices of inspector general be free from organizational impairments to their independence. Additionally, the bill requires offices of inspectors general to report results of audits, including internal audits, to the ‘state auditor, the appropriate interim legislative committee appointed by the New Mexico legislative council and the public.’ The bill notably omits a requirement that the offices of inspectors general report the results directly to those charged with governance of their respective departments. By not requiring the offices of inspector general to report to those charged with governance (department heads), the bill’s provisions run contrary to the independence requirements of GAGAS.”

COMPANIONSHIP

SJR 1 is a companion bill to SB 13, which proposes a State Inspectors General Act that would implement this constitutional amendment if passed.

CAC/jl:ds