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FISCAL IMPACT REPORT

SPONSOR Sapien **ORIGINAL DATE** 02/03/15
LAST UPDATED 03/04/15 **HB** _____

SHORT TITLE State Inspectors General Act **SB** 204/aSFC

ANALYST Cerny

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Indeterminate	Indeterminate		

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Transportation (NMDOT)
 Children, Youth and Families Department (CYFD)
 Office of the Attorney General (AGO)
 Department of Health (DOH)
 New Mexico Corrections Department (NMCD)
 Office of the State Auditor (OSA)
 Department of Finance and Administration (DFA)
 Higher Education Department (HED)
 Human Services Department (HSD)

No Response Received

State Personnel Office (SPO)
 Public Education Department (PED)

SUMMARY

Synopsis of SFC Amendment

Senate Finance Committee amendment to SB 204 require the professional standards adopted pursuant to the legislation to be in accordance with Generally Accepted Government Auditing Standards (GAGAS).

It clarifies that each OIG will have unrestricted access only to its own department's records and other information.

The amendment also includes language that would permit designees for the State Auditor and Attorney General to serve on the GACC, and it clarifies reporting, adding the State Auditor as the recipient of various reports and subject to the same confidentiality requirements as other bodies and departments.

Synopsis of Original Bill

Senate Bill 204 creates the State Inspectors General Act, which would create independent and objective Offices of Inspectors General (OIG), within eight cabinet level departments in the executive branch to perform internal and compliance audits and conduct investigations. The state agencies in which such offices would be created are: CYFD; NMCD; DOH; HED; HSD; PED; DFA; and NMDOT.

The inspectors general would be appointed by each cabinet secretary, and along with their employees, would be classified employees. The offices would report directly to the Secretary. 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, the Medicaid fraud and Elder Abuse division of the AGO as applicable, and the LFC. SB 204 creates the government accountability coordinating council, comprised of the State Auditor, the Attorney General, inspectors general of the eight departments and the director of the LFC or a designate. The council shall 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, the Government Accountability Coordinating Council (GACC) and the LFC. Annual reports and results of audits and investigations will be provided to the cabinet secretary, the GACC, the LFC and the governor. Information in reports made confidential by law or exempt from the Inspection of Public Records Act (IPRA) shall not be disclosed by the OIG, the departments, the GACC, the LFC or the governor. 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.

The Council shall review from the eight 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 as a result of coordination with offices and agencies of the council.

On the effective date of the Act, July 1, 2015, each of the eight departments shall transfer audit and compliance functions, staff, money, appropriations, equipment, furniture, records, to the department's newly created office of inspector general.

FISCAL IMPLICATIONS

SB 204 carries no appropriation.

Importantly, SB 204 anticipates utilization of existing staff to carry out its purposes. In 2014, LFC staff analysis estimated that a total of \$3.386 million in funds is appropriated to the departments affected for FTEs whose duties are already within the purview of the OIG.

SB 204 transfers all functions, appropriations, money, personnel, records, equipment, furniture and other property of the department pertaining to the department's audit and compliance functions to the department's newly created office of inspector general on July 1, 2015.

The Offices of Inspectors General audits and reviews could result in revenue generation or recovery for the departments.

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. 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 204 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 LFC, which performs in-depth program evaluations, OSA which performs financial statement audits, and the AGO, which performs civil/criminal investigations and prosecution, including for Medicaid.

Creating the OIG as a legal entity satisfies the Statement of Principles for Offices of Inspector General as outlined by the Association of Inspectors General. Model legislation from Association of Inspectors General states:

8. Organizational Placement The Inspector General reports to the appointing authority and to the legislative body of the (agency). It is operationally independent from the appointing authority, the legislative branch and the agency. The appointing authority, legislative body or agency head shall not prevent, impair, or prohibit the Inspector General from initiating, carrying out, or completing any audit, investigation or review. The intent of this section is to clearly establish the independence of the Inspector Generals' Office and its activities.

<http://inspectorsgeneral.org/files/2011/01/IG-Model-Legislation.pdf>

PERFORMANCE IMPLICATIONS

HSD analysis states:

Section 4, paragraph B(3) provides that each OIG shall “coordinate activities with the state auditor; the Medicaid fraud and elder abuse division of the attorney general’s office; and the Legislative Finance Committee,” potentially increasing the administrative burden on the OIG.

CYFD analysis also cites performance concerns:

The requirements for creating annual work plans, audit and investigation reports and being a member of the GACC will all be very time-consuming and cumbersome for the CYFD’s IG, taking away valuable time for performing internal audits and reviews needed at CYFD. CYFD’s OIG is currently not completely staffed, and the workload necessary to report to the additional external entities would be burdensome even at full staffing.

ADMINISTRATIVE IMPLICATIONS

HED analysis states:

The bill would mandate New Mexico Higher Education Department to establish an OIG position and the additional staff would require the re-organization of the Institutional Finance Division.

OTHER SUBSTANTIVE ISSUES

Section 4B3 requires the OIG to recover “misspent” public funding; however, the bill does not define what is meant by “misspent” public funding.

Section 5B states that the no office will disclose information that is confidential by law or release records exempt from IPRA. The bill provides no sanctions or penalties for such disclosures. However other statutes addressing confidentiality of information may have penalties that apply.

Section 6A does not require that inspectors general maintain a certified internal auditor (CIA) or similar credential.

AMENDMENTS

The OSA recommends the following amendment to Senate Bill 204: On page 4, between lines 22 and 23, insert “11) perform any special, forensic, or performance audits in accordance with sections 12-6-1 through 12-6-14 NMSA 1978 and the associated rules.”

CAC/je