

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

Senate Bill 704 (Senators Pipkin and Colburn)
 Budget and Taxation

State Government - Inspector General

This bill codifies the Office of the Inspector General and sets forth requirements regarding the salary, staff, and duties of the office.

The bill is contingent on passage of Senate Bill 700/House Bill 819 and its ratification by the voters of Maryland. The bills propose a constitutional amendment which creates the Office of the Inspector General. Subject to these contingencies, the bill takes effect on certification of the election results.

Fiscal Summary

State Effect: General fund expenditures increase by \$645,200 in FY 2015 for the State to establish and staff the newly created Office of the Inspector General. Future year expenditures reflect annualization and inflation, as well as additional staff to begin in FY 2017. Revenues are not affected.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	0	645,200	1,261,700	2,002,700
Net Effect	\$0	\$0	(\$645,200)	(\$1,261,700)	(\$2,002,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Salary and Staff

The Inspector General's salary must be (1) \$112,500 for the first year of the term beginning January 2015; (2) \$116,667 starting on the first anniversary of the beginning of the term; (3) \$120,833 starting on the second anniversary of the beginning of the term; and (4) \$125,000 starting on the third anniversary of the beginning of the term and thereafter.

The Inspector General is also entitled to reimbursement for travel and other expenses that are connected with the duties of the office. The Inspector General may have offices that the State must maintain and equip. In accordance with the State budget, the Inspector General may employ a staff. The staff must perform the duties assigned by the Inspector General and carry identification cards. The staff serve at the pleasure of the Inspector General and are entitled to compensation as provided in the State budget and reimbursement for expenses under the standard State travel regulations. The Inspector General may designate one Chief Deputy Inspector General and one or more deputy inspectors general from among the employees on the staff. The bill specifies procedures if the Inspector General temporarily is unable or unavailable to carry out the duties of the office.

Duties

The Inspector General may (1) adopt regulations to carry out the provisions of the bill and (2) assist in an investigation conducted by, or conduct a joint investigation with, a law enforcement agency or a prosecutorial agency. The Inspector General must (1) develop an operations manual that conforms to the standards adopted by the Association of Inspectors General; (2) make the operations manual available to the public; and (3) provide training and education for the "units." "Units" is defined in the bill as an agency or unit of the Executive Branch.

The Inspector General must examine and investigate the management and affairs of the units concerning waste, mismanagement, misconduct, abuse, fraud, and corruption and conduct audits of the units. The Inspector General may investigate (1) misuse of State-owned vehicles or other property; (2) evidence of a pattern of excessive charges on State contracts; (3) unauthorized use of leave by State employees; (4) mismanagement of governmental operations; (5) waste or abuse of property belonging to a unit; and (6) construction, operation, and maintenance of State facilities. The Inspector General periodically must review and make recommendations to improve the policies and procedures of the units.

The Inspector General must (1) receive complaints of waste, mismanagement, misconduct, abuse, fraud, or corruption in the units; and (2) establish a toll-free hotline number and website through which anonymous complaints may be filed. The Inspector General must determine whether any complaint received should be investigated. If evidence of criminal activity is discovered when investigating a complaint, the Inspector General must notify the appropriate law enforcement agency.

A unit must cooperate fully with the Inspector General in an investigation or audit that is conducted by the office. The Inspector General must have access to all records, data, reports, contracts, correspondence, or other documents of a unit during an investigation or audit conducted by the office.

Depositions and Subpoenas

In performing the duties of Inspector General, the Inspector General or the designee may (1) seek and obtain sworn testimony; (2) compel the attendance of witnesses to be deposed by the office; and (3) compel the production of records by issuing a subpoena in accordance with the bill's provisions.

The Inspector General may issue a subpoena or subpoena *duces tecum* (which requires a witness to bring relevant documents, evidence, or records) only with the approval of a judge of the circuit court for the county in which the office is located. The Inspector General must submit a written application for the judge's approval. A written decision on an application submitted must be issued within 72 hours after the receipt of the application. A subpoena for production of records may be served by (1) certified mail, return receipt requested, at the addressee's residence or business address; (2) a representative appointed by the Inspector General; or (3) the appropriate law enforcement agency. If a person refuses to obey a subpoena issued by the Inspector General, the judge that approved the issuance of the subpoena may issue an order to the person requiring the person to appear before the court to show cause and find the person in contempt of court.

Confidentiality of Records

Records prepared or obtained by the Inspector General in connection with an investigation or audit conducted by the office are confidential and not subject to disclosure under the Public Information Act until the final report on the investigation or audit is issued. However, if an individual requests a public record under the Public Information Act and the only copy of the public record has been obtained by the Inspector General, the custodian of public records must certify that the Inspector General has the only copy. In such instances, the Inspector General must allow the individual to examine and copy the record. An individual who discloses a record in violation of these provisions is guilty of a misdemeanor and subject to maximum penalties of one year imprisonment and/or a \$2,000 fine.

Reporting Requirements

At the end of each fiscal year, the Inspector General must submit an annual report to the Governor and the General Assembly. The annual report must (1) describe the business and proceedings of the office during the preceding fiscal year; and (2) include any recommendations regarding the activities of the units that the Inspector General considers appropriate. The Inspector General must issue a final report on an investigation or audit completed by the office. The final report must be submitted to the Governor and the General Assembly and posted on the office's website. Prior to releasing a final report, the Inspector General must provide an opportunity for the unit that was the subject of the investigation or audit to respond to the report. The Inspector General is not required to provide an opportunity for response if the Inspector General, in conjunction with a U.S. Attorney, an Attorney General, a State's Attorney, or any other appropriate prosecutorial agency, determines that allowing the unit to respond would jeopardize a pending or potential criminal investigation.

Elections

The bill authorizes a special primary election and a special general election to be held in order to fill a vacancy in the Office of Inspector General if the vacancy occurs more than two years before the expiration of the Inspector General's term. A special primary election must be held on a Tuesday that is at least 36 days after the date that the vacancy occurs. The special general election must be held on a Tuesday that is at least 36 days after the date of the special primary election. The State Board of Elections must adopt regulations to comply with these provisions.

Current Law/Background: There is no State Office of the Inspector General. The Office of Legislative Audits (OLA), a unit within the Department of Legislative Services (DLS), performs similar functions as the duties set forth in this bill for the Office of the Inspector General. OLA reports to the General Assembly's Joint Audit Committee and is responsible for:

- performing fiscal compliance audits of State agencies to evaluate fiscal operations and determine compliance with laws and regulations;
- conducting performance audits to evaluate whether a State agency or program is operating in an economic, efficient, and effective manner;
- conducting performance audits of the financial management practices of local school systems;
- operating a fraud hotline for reporting fraud, waste, and abuse of State resources;
- monitoring the financial reporting practices and financial condition of local governments in Maryland; and

- conducting special reviews and investigations requested by the Joint Audit Committee.

OLA dates back to 1900 when the Examiner of Accounts was created. The name, organization, and duties have undergone many changes through the years, including the expansion of its responsibilities. In 1968, the Office of the State Auditor was transferred from the Executive Branch to the Legislative Branch, which created an independent organization to audit Executive and Judicial Branch agencies.

The Legislative Auditor has general administrative control over the Office of Legislative Audits, subject to the policies and directives of the President of the Senate and the Speaker of the House of Delegates, the Joint Audit Committee of the General Assembly, and the Executive Director of DLS. The Legislative Auditor is appointed without a fixed term of office by the Executive Director of DLS, subject to the approval of the President and the Speaker. The Legislative Auditor serves in a nonpartisan capacity.

State Fiscal Effect: General fund expenditures increase by \$645,200 in fiscal 2015, which reflects a start date of January 1, 2015. Assuming the constitutional amendment is adopted in 2012, the Inspector General would not be elected until the November 2014 election, therefore there will be no expenditures until the Inspector General’s first term which would begin on January 1, 2015. This estimate reflects the cost of hiring eight additional employees, in addition to the elected Inspector General position, to carry out the functions of the office. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- For the first one and one-half years, the office will be staffed by one deputy Inspector General, one senior auditor, three staff auditors/investigators, one technical engineer, and two legislative assistants.
- Other operating expenditures will be proportionately similar to those of the Office of Legislative Audits.

Positions	9
Salaries and Fringe Benefits	\$503,500
Operating Expenses	<u>141,700</u>
Fiscal 2015 Expenditures	\$645,200

General fund expenditures increase to \$2 million by fiscal 2017, which reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Future year expenditures also reflect the cost of hiring six additional employees (one senior manager, one senior auditor, three staff

auditors/investigators, and one senior engineer) in fiscal 2017 due to an increase in workload once the office begins receiving additional complaints and performing more audits and investigations. Expenditures beyond fiscal 2017 may continue to increase if the workload undertaken by the Office of the Inspector General necessitates additional staff. DLS notes that the above expenditures are a preliminary estimate only, as an accurate determination of the expenditures associated with creating an Office of the Inspector General cannot be reliably determined before the function commences, particularly when expenditures will depend in large part on the scope of audits and investigations the elected Inspector General will decide to undertake, as well as the number of complaints that are received.

Additional Information

Prior Introductions: None.

Cross File: HB 820 (Delegate W. Miller, *et al.*) - Health and Government Operations.

Information Source(s): Office of Legislative Audits, Department of Budget and Management, Department of Health and Mental Hygiene, Department of Legislative Services

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