

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 738

(Senator McFadden)

(By Request – Baltimore City Administration)

Judicial Proceedings

**Counties and Baltimore City - Inspectors General - Subpoena Power and
Judicial Enforcement**

This bill authorizes a county that has established an Office of Inspector General (OIG) to enact a local law or ordinance authorizing the inspector general to (1) issue a subpoena to require any person to appear under oath as a witness or produce any record or other material in connection with an audit or investigation of the OIG; and (2) file a petition for enforcement of a subpoena, issued in accordance with the local law or ordinance, with the circuit court for the county.

The bill applies to an OIG created by ordinance or executive order.

Fiscal Summary

State Effect: Any increase in petitions for enforcement of subpoenas could be handled with existing resources of the Judiciary.

Local Effect: Any increase in issuance of subpoenas by county OIGs or petitions to circuit courts for enforcement of subpoenas as a result of this bill could be handled with existing local resources.

Small Business Effect: None.

Analysis

Current Law: The federal Inspector General Act of 1978 created OIGs in several federal agencies and departments. An OIG is an independent entity, charged with

detecting and preventing fraud and abuse and promoting integrity and accountability in federal government. An OIG conducts independent audits and can even conduct criminal investigations. Some of the powers of a federal OIG are listed below:

- request information or assistance from any governmental agency or unit necessary for the OIG to carry out its duties and responsibilities;
- require the production of information, answers, and various documents and papers by subpoena. If the subpoenaed party refuses to obey the subpoena, the subpoena is enforceable by order of any appropriate U.S. District Court; and
- administer an oath, affirmation, or affidavit, whenever necessary in the performance of the OIG's functions.

Background: Baltimore City and Montgomery County are the two jurisdictions in Maryland with OIGs. Several other jurisdictions have county auditors offices that perform functions similar to an OIG. However, because this bill specifically names OIGs, it is assumed that county auditors will not be affected by this bill.

Montgomery County created its OIG through legislation enacted in 1997. The inspector general is appointed by the county council for a term of three years. Though an appointee, the inspector general has control over the topics chosen for review. Like a federal OIG, Montgomery County OIG's mission centers around detection of fraud and abuse and accountability in county government. The Montgomery County Code authorizes the county inspector general to issue subpoenas and petition for enforcement of subpoenas. This authority is to be exercised only if the inspector general does not get the requested information from the appropriate county governmental unit and action by the chief administrative officer, county attorney, and council president has not resulted in the production of the requested information. The OIG advises that it has issued three subpoenas during its existence.

Baltimore City created its OIG through executive order on July 27, 2005. The office is located within the city's Department of Law, and the inspector general is appointed by the mayor. The purpose of the office is similar to a federal OIG. According to the executive order, the Baltimore City OIG is required to record and consider complaints of abuse and fraud involving municipal officers, members of city boards and commissions, city employees, and entities receiving city funds or benefits.

Several other states and cities have Offices of Inspectors General, including Florida, Massachusetts, Ohio, Philadelphia, Chicago, and the District of Columbia.

State Expenditures: Petitions for enforcement of subpoenas are made to circuit courts. This bill authorizes local OIGs to enact local laws or ordinances authorizing county OIGs

to petition circuit courts for enforcement of subpoenas. This could result in increased petitions for enforcement of subpoenas. There are insufficient data at this time to reliably estimate the increase in petitions as a result of this bill. However, it is assumed that this increase could currently be handled with existing State resources, given that only two jurisdictions in the State currently have OIGs.

Local Expenditures: For the reasons stated above, it is assumed that any increase in petitions for enforcement of subpoenas as a result of this bill could be handled with existing local resources.

Small Business Effect: None.

Additional Information

Prior Introductions: None.

Cross File: HB 754 (Delegate Marriott, *et al.*) (By Request – Baltimore City Administration) – Judiciary.

Information Source(s): Montgomery County, Prince George’s County, Howard County, Judiciary (Administrative Office of the Courts), City of Frederick, Baltimore County, Baltimore City, Department of Legislative Services

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nas/jr

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