

Amend CSSB 750 (Senate committee report) by striking all below the enacting clause and substituting the following:

SECTION 1. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2116 to read as follows:

CHAPTER 2116. TEXAS INSPECTORS GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2116.001. DEFINITIONS. In this chapter:

(1) "Agency" means a state agency to which this chapter applies, as provided by Section 2116.002.

(2) "Coordinating council" means the Coordinating Council of Inspectors General established under Section 2116.101.

(3) "Inspector general" means an individual appointed as an inspector general at an agency under this chapter.

(4) "Presiding officer" means the presiding officer of the governing body of an agency, or the commissioner of an agency if a single commissioner presides over the agency.

(5) "Review" includes an inspection, investigation, or similar activity.

Sec. 2116.002. APPLICABILITY TO CERTAIN STATE AGENCIES.

This chapter applies to the following state agencies:

(1) Health and Human Services Commission;

(2) Texas Department of Criminal Justice;

(3) Texas Department of Transportation;

(4) Texas Education Agency;

(5) Texas Higher Education Coordinating Board; and

(6) Texas Youth Commission.

[Sections 2116.003-2116.050 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 2116.051. CREATION OF OFFICE OF INSPECTOR GENERAL.

The office of inspector general is created at each agency as provided by this chapter to conduct investigations, inspections, and other reviews.

Sec. 2116.052. APPOINTMENT; TERM. (a) The governor with the advice and consent of the senate shall appoint an inspector general to serve within each agency.

(b) An inspector general serves a two-year term expiring February 1 of each odd-numbered year.

Sec. 2116.053. QUALIFICATIONS. (a) In appointing a person as inspector general, the governor shall consider the person's integrity, capability for strong leadership, and demonstrated knowledge, skills, abilities, and experience in investigation, prosecution, management analysis, public administration, criminal justice administration, accounting, auditing, financial analysis, law, or other closely related fields.

(b) Additional recommended qualifications for appointing an inspector general include licenses or certifications as a lawyer, fraud examiner, public accountant, or internal auditor.

Sec. 2116.054. CONFLICT OF INTEREST. (a) An inspector general may not serve as an ex officio member on the governing body of a governmental entity.

(b) An inspector general may not have a financial interest in the transactions of the inspector general's agency.

Sec. 2116.055. ORGANIZATION. (a) An inspector general shall establish an organizational structure for the inspector general's office that is appropriate to carrying out the responsibilities and functions of the office.

(b) The office must be established within the agency only using existing agency resources dedicated to the investigation of fraud, abuse, and employee misconduct.

Sec. 2116.056. INDEPENDENCE OF OFFICE. (a) Except as provided by Sections 2116.157, 2116.161, 2116.201, and 2116.202, an inspector general operates independently of the agency in which the inspector general serves.

(b) An executive state agency may not impair or prohibit an inspector general from initiating or completing a review.

Sec. 2116.057. OPERATION OF OFFICE. An inspector general shall establish policies and procedures to guide the operation of the inspector general's office.

Sec. 2116.058. QUALITY ASSURANCE AND CONTROL. (a) An inspector general shall adopt procedures to ensure adequate quality control over the inspector general's work and practices and to ensure that the work of the inspector general's office meets commonly used and adopted professional standards.

(b) The inspector general shall implement the quality

control program to guarantee that the office is structured appropriately and that the office implements policies and practices to ensure objective and accurate reviews.

Sec. 2116.059. PUBLISHING POLICIES AND PROCEDURES IN TEXAS REGISTER. An inspector general shall publish in the Texas Register the policies and procedures adopted under this subchapter.

[Sections 2116.060-2116.100 reserved for expansion]

SUBCHAPTER C. COORDINATING COUNCIL AND PERSONNEL

Sec. 2116.101. COORDINATING COUNCIL. (a) The Coordinating Council of Inspectors General is composed of each inspector general appointed under Section 2116.052 and the state auditor.

(b) The state auditor shall serve as presiding officer of the council.

(c) The coordinating council shall meet at least quarterly at the call of the presiding officer.

(d) The coordinating council shall:

(1) pursuant to Section 321.022, cooperate and coordinate investigations as necessary;

(2) focus on fraud prevention activities; and

(3) coordinate fraud prevention training.

(e) The coordinating council shall submit a report of the coordinating council's activities at least two times each year to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the state auditor; and

(5) the appropriate legislative oversight committees.

(f) Chapter 2110 does not apply to the coordinating council. For the purposes of coordinating and cooperating on investigations, Chapter 551 does not apply to the coordinating council.

(g) The coordinating council's activities under Subsection (d) may not include making management decisions or directing the operations of a state agency.

Sec. 2116.102. PERSONNEL, OFFICE SPACE, AND EQUIPMENT. The presiding officer of the state agency to which an inspector general is appointed, using existing agency resources dedicated to the investigation of fraud, abuse, and employee misconduct, shall

provide sufficient personnel and office space and equipment for the inspector general to perform the duties prescribed under this chapter.

Sec. 2116.103. EXPERTS. Subject to Sections 2116.055 and 321.020, an inspector general may contract with certified public accountants, management consultants, or other professional experts necessary to independently perform the functions of the inspector general's office. The inspector general shall use existing agency resources dedicated to the investigation of fraud, abuse, and employee misconduct for this purpose.

[Sections 2116.104-2116.150 reserved for expansion]

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF INSPECTOR GENERAL

Sec. 2116.151. REVIEW AUTHORITY. (a) An inspector general may evaluate any activity or operation of the inspector general's agency related to the investigation, detection, or prevention of fraud or employee misconduct. A review may include an investigation or other inquiry into:

(1) a specific act or allegation of impropriety, malfeasance, or nonfeasance in the obligation, spending, receipt, or other use of state money; or

(2) a specific financial transaction or practice that may involve the impropriety, malfeasance, or nonfeasance.

(b) An inspector general may conduct criminal, civil, and administrative reviews related to the course and scope of the duties of the inspector general.

Sec. 2116.152. INITIATION OF REVIEW. An inspector general may initiate a review:

(1) on the inspector general's own initiative; or

(2) based on a complaint from any source concerning a matter described by Section 2116.151 at the agency.

Sec. 2116.153. FACTUAL DETERMINATION OF REVIEW. (a) An inspector general is charged solely with making a determination of the truth of a complaint based on a finding of facts and presenting those findings as provided in Subchapter E.

(b) An inspector general may not make remedial recommendations.

Sec. 2116.154. ACCESS TO INFORMATION. (a) In furtherance

of a review conducted by the inspector general's office, an inspector general is entitled to access all books, accounts, reports, vouchers, or other information from any entity receiving money from the inspector general's agency, including confidential information and electronic data. The inspector general may not access data or other information the release of which is restricted under federal law unless the appropriate federal agency approves the release.

(b) To the extent that the performance of the powers and duties of the inspector general is not impeded, an inspector general shall make reasonable efforts to coordinate requests for access under Subsection (a) so as not to hinder the daily operations of the entity.

(c) Notwithstanding any other provision of this section, an inspector general's access to information under Subsection (a) is limited to information connected to the specific matter under investigation by the inspector general or a specific contract related to that investigation.

Sec. 2116.155. COOPERATION REQUIRED. (a) In furtherance of a review conducted by the inspector general's office, an inspector general may require the assistance of the administrative head, the governing body, an auditor or accountant, or any other employee of the inspector general's agency.

(b) To the extent that the performance of the powers and duties of the inspector general is not impeded, an inspector general shall make reasonable efforts to coordinate requests for assistance under Subsection (a) so as not to hinder the daily operations of the agency.

Sec. 2116.156. EMPLOYEE REPORTS. The presiding officer of the agency to which an inspector general is appointed and the inspector general shall require employees at the agency to report to the agency's office of inspector general information regarding fraud, waste, misuse, corruption, illegal acts, or abuse.

Sec. 2116.157. SUBPOENAS. (a) On request of an inspector general, a district attorney or the attorney general may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence in

connection with a review conducted under this chapter.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the inspector general, acting through the attorney general, may file suit to enforce the subpoena in a district court in this state.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may hold in contempt a person who fails to obey the court order.

(e) The inspector general shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the inspector general may charge for copies of its records.

(f) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103.

Sec. 2116.158. INTERNAL AUDITOR. (a) In this section, "internal auditor" means a person appointed under Section 2102.006.

(b) The internal auditor for the agency shall provide the inspector general with a copy of the agency's internal audit plan to:

(1) assist in the coordination of efforts between the inspector general and the internal auditor; and

(2) limit duplication of effort regarding reviews by the inspector general and internal auditor.

(c) The internal auditor shall provide to the inspector general all final audit reports concerning audits of any:

(1) part or division of the agency;

(2) contract, procurement, or grant; and

(3) program conducted by the agency.

Sec. 2116.159. COOPERATION WITH LAW ENFORCEMENT OFFICIALS AND OTHER ENTITIES. (a) An inspector general shall provide information and evidence relating to criminal acts to the state auditor's office and appropriate law enforcement officials.

(b) An inspector general shall refer matters for further civil, criminal, and administrative action to appropriate

administrative and prosecutorial agencies, including the attorney general.

(c) An inspector general may enter into a memorandum of understanding with a law enforcement or prosecutorial agency, including the office of the attorney general, to assist in conducting a review under this chapter.

Sec. 2116.160. COOPERATION AND COORDINATION WITH STATE AUDITOR. (a) The state auditor may, on request of an inspector general, provide appropriate information or other assistance to the inspector general, as determined by the state auditor.

(b) An inspector general may meet with the state auditor's office to coordinate a review conducted under this chapter, share information, or schedule work plans.

(c) The state auditor is entitled to access all information maintained by an inspector general, including vouchers and electronic data and information obtained under Section 2116.154 or subject to 2116.251.

(d) Any information obtained or provided by the state auditor under this section is confidential and not subject to disclosure under Chapter 552.

Sec. 2116.161. PREVENTION. An inspector general may provide training or other education regarding the prevention of fraud, waste, or abuse at the inspector general's agency. The training or education must be approved by the presiding officer.

Sec. 2116.162. RULEMAKING. (a) An agency may adopt rules to respond to reports and referrals from the agency's inspector general, including sanctions for violations.

(b) The rules shall include due process for referrals and findings that might result in administrative penalties.

[Sections 2116.163-2116.200 reserved for expansion]

SUBCHAPTER E. OVERSIGHT OF INSPECTOR GENERAL; REPORTS

Sec. 2116.201. ORGANIZATION PLACEMENT. An inspector general reports to the presiding officer of the inspector general's agency.

Sec. 2116.202. ANNUAL EVALUATION. An agency's presiding officer shall conduct an annual evaluation of the agency's inspector general. As part of this evaluation, the presiding

officer may request that the attorney general evaluate the policies and practices of the inspector general to ensure that the inspector general complies with professional standards and nationally accepted policies and practices.

Sec. 2116.203. ALLEGATIONS OF MISCONDUCT AGAINST PRESIDING OFFICER. If allegations that a presiding officer has engaged in misconduct result in a review by an inspector general, the inspector general shall report to the governor during the review until the report is completed or the review is closed without a finding.

Sec. 2116.204. PERIODIC REPORTING TO STATE AUDITOR REQUIRED. An inspector general shall timely inform the state auditor of the initiation of a review and the ongoing status of each review.

Sec. 2116.205. REPORTING OFFICE FINDINGS. An inspector general shall report the findings of the inspector general's office to:

(1) the presiding officer of the inspector general's agency;

(2) the governor;

(3) the lieutenant governor;

(4) the speaker of the house of representatives;

(5) the state auditor's office;

(6) the appropriate legislative oversight committees;

and

(7) appropriate law enforcement and prosecutorial agencies, including the office of the attorney general, if the findings relate to a criminal investigation.

Sec. 2116.206. FLAGRANT VIOLATIONS; IMMEDIATE REPORT. An inspector general shall immediately report to the presiding officer of the inspector general's agency, the governor's general counsel, and the state auditor a particularly serious or flagrant problem relating to the administration of a program or operation of the agency or interference with an inspector general operation.

Sec. 2116.207. ANNUAL REPORT. (a) An inspector general annually shall prepare a complete and detailed written report describing the activities of the inspector general during the

fiscal year. The report must separately describe each major investigation, audit, review, fraud prevention effort, and agency assistance effort completed during the fiscal year.

(b) The annual report must meet the reporting requirements applicable to financial reporting provided in the General Appropriations Act.

(c) The inspector general shall deliver a copy of each annual report to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the presiding officer of each house and senate committee having jurisdiction over an agency to which this chapter applies;

(5) the presiding officer of each agency to which this chapter applies;

(6) the state auditor; and

(7) the comptroller.

(d) Each agency to which this chapter applies shall post the annual report on its agency Internet website.

(e) The inspector general shall issue the annual report not later than the 60th day after the last day of each fiscal year.

[Sections 2116.208-2116.250 reserved for expansion]

SUBCHAPTER F. PUBLIC RECORDS; EXCEPTIONS

Sec. 2116.251. INFORMATION CONFIDENTIAL. (a) Except as provided by this section, Sections 2116.160 and 2116.252, and Subchapter E, all information and material compiled by an inspector general during a review under this chapter is:

(1) confidential and not subject to disclosure under Chapter 552; and

(2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the state auditor's office, or the inspector general's office or its agents involved in the review related to that information or material.

(b) As an inspector general determines appropriate, information relating to a review shall be disclosed to:

- (1) a law enforcement agency;
- (2) the attorney general; or
- (3) the state auditor's office.

(c) A person that receives information under Subsection (b) may not disclose the information except to the extent that disclosure is consistent with the authorized purpose for which the person first obtained the information.

Sec. 2116.252. FINAL REVIEW REPORTS. (a) An inspector general shall prepare a final report for each review conducted under this chapter. The final report must include:

- (1) a summary of the activities performed by the inspector general in conducting the review;
 - (2) a determination of whether wrongdoing was found;
- and
- (3) a description of any findings of wrongdoing.

(b) An inspector general's final review reports are subject to disclosure under Chapter 552.

(c) All working papers and other documents related to compiling the final review reports remain confidential and are not subject to disclosure under Chapter 552.

(d) Unless otherwise prohibited by this chapter or other law, the inspector general shall deliver a copy of each final report that concerns the implementation or administration of a state or federally funded program to:

- (1) the presiding officer of the subject agency;
- (2) the governor;
- (3) the lieutenant governor;
- (4) the speaker of the house of representatives;
- (5) the state auditor; and
- (6) the appropriate legislative oversight committees.

[Sections 2116.253-2116.300 reserved for expansion]

SUBCHAPTER G. STATE AUDITOR AND INSPECTOR GENERAL INDEPENDENCE

Sec. 2116.301. STATE AUDITOR AUDITS, INVESTIGATIONS, AND ACCESS TO INFORMATION NOT IMPAIRED. This chapter or other law related to the operation of an inspector general does not prohibit the state auditor from conducting an audit or an investigation or other review or from having full and complete access to all records

and other information, including witnesses and electronic data, that the state auditor considers necessary for the audit or the investigation or other review.

Sec. 2116.302. ACCESS TO STATE AUDITOR INFORMATION NOT IMPAIRED. Except as authorized by the state auditor, this chapter or other law related to the operation of an inspector general does not permit an inspector general or any other person to access any working papers, including any documents, notes, and other information, collected or maintained by the state auditor's office.

Sec. 2116.303. AUTHORITY OF STATE AUDITOR TO CONDUCT AUDITS NOT IMPAIRED. This chapter or other law related to the operation of an inspector general does not take precedence over the authority of the state auditor to conduct an audit under Chapter 321 or other law.

[Sections 2116.304-2116.350 reserved for expansion]

SUBCHAPTER H. FINANCIAL PROVISIONS

Sec. 2116.351. BUDGET. An inspector general shall submit a budget to the presiding officer of the inspector general's agency.

Sec. 2116.352. COSTS. (a) An inspector general shall maintain information regarding the cost of reviews.

(b) An inspector general may cooperate with appropriate administrative and prosecutorial agencies, including the office of the attorney general, in recovering costs incurred under this chapter from nongovernmental entities, including contractors or individuals involved in:

(1) violations of state and federal rules or statutes;

or

(2) abusive or wilful misconduct.

SECTION 2. Subsections (a), (b), and (h), Section 531.102, Government Code, are amended to read as follows:

(a) In this section, "office" means [The commission, through] the commission's office of inspector general established under Chapter 2116[~~, is responsible for the investigation of fraud and abuse in the provision of health and human services and the enforcement of state law relating to the provision of those services. The commission may obtain any information or technology necessary to enable the office to meet its responsibilities under~~

~~this subchapter or other law].~~

(b) The [~~commission, in consultation with the~~] inspector general for the commission~~[7]~~ shall set clear objectives, priorities, and performance standards for the office that emphasize~~[-~~

~~[(1) coordinating investigative efforts to aggressively recover money;~~

~~[(2) allocating resources to cases that have the strongest supportive evidence and the greatest potential for recovery of money; and~~

~~[(3)]~~ maximizing opportunities for referral of cases to the office of the attorney general in accordance with Section 531.103.

(h) In addition to performing functions and duties otherwise provided by law, the office may:

(1) assess administrative penalties otherwise authorized by law on behalf of the commission or a health and human services agency;

(2) request that the attorney general obtain an injunction to prevent a person from disposing of an asset identified by the office as potentially subject to recovery by the office due to the person's fraud or abuse;

(3) provide for coordination between the office and special investigative units formed by managed care organizations under Section 531.113 or entities with which managed care organizations contract under that section;

(4) audit the use and effectiveness of state or federal funds, including contract and grant funds, administered by a person or state agency receiving the funds from a health and human services agency; and

(5) conduct investigations relating to the funds described by Subdivision (4) ~~[, and~~

~~[(6) recommend policies promoting economical and efficient administration of the funds described by Subdivision (4) and the prevention and detection of fraud and abuse in administration of those funds].~~

SECTION 3. Subsections (a-1), (d), and (e), Section

531.102, and 531.1021, Government Code, are repealed.

SECTION 4. (a) The repeal by this Act of certain provisions of Section 531.102, Government Code, does not affect the validity of a complaint, investigation, or other proceeding initiated under that section before the effective date of this Act. A complaint, investigation, or other proceeding initiated under that section is continued in accordance with the changes in law made by this Act.

(b) The repeal by this Act of Section 531.1021, Government Code, does not affect the validity of a subpoena issued under that section before the effective date of this Act. A subpoena issued under that section before the effective date of this Act is governed by the law that existed when the subpoena was issued, and the former law is continued in effect for that purpose.

SECTION 5. (a) The person serving as inspector general under Subsection (a-1), Section 531.102, Government Code, on the effective date of this Act or any person appointed to fill a vacancy in the office held by that person shall serve as the inspector general for the Health and Human Services Commission under Chapter 2116, Government Code, as added by this Act, until February 1, 2009, and carry out the functions of an inspector general in the same manner as an inspector general appointed under Chapter 2116.

(b) This section does not prohibit a person described by Subsection (a) of this section from being appointed under Chapter 2116, Government Code, as added by this Act, if the person has the qualifications required under that chapter.

SECTION 6. As soon as possible after the effective date of this Act, the governor shall appoint an inspector general for each agency other than the Health and Human Services Commission listed in Section 2116.002, Government Code, as added by this Act, to an initial term expiring February 1, 2009.

SECTION 7. This Act takes effect January 1, 2008.