



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair

Tuesday, March 17, 2015 2:00PM
State Capitol, Conference Room 325

by
Susan Pang Gochros
Chief Staff Attorney and Department Head,
Intergovernmental and Community Relations

Bill No. and Title: Senate Bill No. 286, Senate Draft 2, Relating to Office of the State Inspector General; State Inspector General; Establishment of Office; Government Integrity and Accountability; Appropriation (\$).

Purpose: Establishes the office of the state inspector general, to be headed by the state inspector general to investigate complaints alleging fraud, waste, abuse, or corruption by a state agency or quasi-public agency, or by the officers or employees of a state agency or quasi-public agency. Makes an appropriation. Effective 1/7/2059. (SD2)

Judiciary's Position:

The Hawai‘i State Judiciary takes no position concerning the establishment of an Office of the State Inspector General, but urges that such an office not be administratively attached to the Hawai‘i State Judiciary.

The Hawai‘i State Judiciary’s mission, as an independent branch of government, is to “administer justice in an impartial, efficient and accessible manner in accordance with the law.” The mission of the Inspector General, as set forth in this bill, is to “investigate complaints alleging fraud, waste abuse or corruption . . .” Placing an investigative office within the Judiciary, which is likely to adjudicate cases arising from investigations conducted by the office of the Inspector General, may generate unnecessary confusion given the very specific mission of the Judiciary as an adjudicative, and not investigative, governmental entity. It could possibly create a conflict of interest, or a perceived conflict of interest.



Senate Bill No. 286, Senate Draft 2, Relating to Office of the State Inspector General; State Inspector General; Establishment of Office; Government Integrity and Accountability

House Committee on Judiciary

Tuesday, March 17, 2015

Page 2

Senate Bill 286, S.D. 2 establishes an office of the state inspector general, to be placed within the Hawai‘i State Judiciary for administrative purposes. This office would investigate alleged fraud, waste, abuse or corruption by any state agency, quasi-public agency, or any officer or employee of a state agency or quasi-public agency.

We have concerns about the placement of this office within the Hawai‘i State Judiciary. Although Hawai‘i State Constitution, article V, section 6 concerns executive offices, its requirements would appear to be instructive in the present situation. This provision mandates that “[a]ll executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties shall be allocated by law among and within not more than twenty principal departments *in such a manner as to group the same according to common purposes and related functions.*” (Emphasis added.)

In 1980, a major reorganization of State Government occurred and was predicated upon this constitutional provision. In organizing 17 departments of the executive branch, the legislature endeavored to “[improve] the delivery of services to the people”; and “group” programs more homogeneously to more closely relate them with the stated mission of associated departments” among other goals. That goal should be kept in mind in determining where best to place the Office of the Inspector General.

Confusion may also result based upon the scope of the Office of the Inspector General’s statutory responsibilities. For several years, Congress has considered legislation that would create an inspector general to conduct investigations of alleged misconduct of federal judges, act to prevent fraud and waste, and recommend changes to the judicial branch. (*See, e.g.*, Senate Bill 575, Judicial Transparency and Ethics Enhancement Act of 2013). It is possible that the present bill, with placement of the inspector general within the judicial branch, would be misconstrued by the public as an office that would detect, expose and deter problems within the judicial branch of government. That is clearly not the intent of the bill, but it is a possible concern given the proposed placement of the office within the Judiciary.

The Department of the Attorney General submitted testimony on S.B. No. 286, S.D.1, urging that the Office not be administratively attached to the Department of the Attorney General, noting that “[a]ssigning the Office to an executive branch department other than the Department [of the Attorney General] will physically reinforce the separation between the Inspector General and the Attorney General that the Legislature intends, and we think is critical.” We agree with this statement and note that the same concerns arise if the office is placed within the Judiciary. An office tasked with investigating matters that could be prosecuted under the



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House Committee on Judiciary

Tuesday, March 17, 2015

Page 3

penal code should not be placed under the governmental entity responsible for the adjudication of the very same matters that the office is investigating. Again, this could create a very serious misperception by the public.

The Department of the Attorney General also noted in its testimony in reference to S.B. No. 286, S.D.1, that on page 4, lines 11-15, a specific reference to the Judiciary should be included so as to clarify that the Judiciary is not limited or prevented from “conducting any audit, investigation, or review concurrently with any similar audit, investigation, or review conducted by the inspector general.” We also suggest that this inclusion be made to clarify this function.

Finally, and again, as noted by the Department of the Attorney General in reference to S.B. No. 286, S.D.1, if the inspector general is to serve a term of five years (page 3, line 9) and is appointed, and shall “hire staff” (page 4, line 3), language that specifically exempts the inspector general from Hawai‘i Revised Statutes chapter 76 (civil service) should be inserted. Moreover, if the staff for the Inspector General’s office is also intended to serve without regard to Hawai‘i Revised Statutes, chapter 76, that intention should be specified in the legislation.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 286, S.D. 2, RELATING TO THE OFFICE OF THE STATE INSPECTOR GENERAL.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 17, 2015

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Charleen M. Aina, Deputy Attorney General

Chair Rhodes and Members of the Committee:

The Department of the Attorney General (Department) takes no position on the establishment of an Office of the State Inspector General (Office). We testify only (1) to urge that the Office not be reassigned for administrative purposes to the Department of the Attorney General, or responsible for investigating conduct that is punishable under the Penal Code, and (2) to suggest additional revisions to minimize procedural challenges to criminal prosecutions that are based on referrals from the Inspector General, and to avoid infringing on rights protected by the federal and state constitutions, and other state statutes.

To strengthen the Inspector General's independence, the Office should not be assigned to the Department of the Attorney General even for administrative purposes only. Defining the duties and responsibilities of the Inspector General and the Office as distinctively as possible should also minimize procedural challenges in criminal prosecutions the Attorney General or any county prosecutor initiates on the basis of complaints initially filed with the Office, or directly with the Attorney General or prosecutor. Assigning the Office to an executive branch department other than the Department should reinforce the separation between the Inspector General and the Attorney General that we understand the Legislature intends. It should also reduce misimpressions in state agencies, and among state employees and the public, that only the Inspector General is authorized to investigate complaints of alleged fraud, waste, abuse, and corruption in state government.

We recommend the following revisions to further minimize procedural challenges, and to avoid infringing on rights protected by the federal and state constitutions and state statutes:

1. Refine the definition of "quasi-public agency" at page 2, line 16 to more specifically describe the "entit[ies]" that the Legislature intends to subject to the Inspector General's investigations. "Quasi-public agency" was initially defined as "any entity that is supported in whole or in part by state funds." Adding "chapter 42F grantees" to the definition is helpful but the term "including" suggests that there may be other private entities "supported . . . by state funds" that the Legislature is authorizing the Inspector General to investigate. Private entities regularly receive state funds by means of grants, or contracts for financing or for procuring goods or services, under chapters 39, 42F, 103D, 103F, Hawaii Revised Statutes (HRS), and other statutes (including statutes that provide loans and other funding at favorable interest rates). This definition is critical to determining the scope of the Inspector General's jurisdiction, and should be written as clearly as possible. If all of these other private entities are the intended subjects of the Inspector General's investigations, "receives or is paid state funds" should be substituted for "is supported in whole or in part by state funds;"

2. Collapse the two sentences in subsection (f) at page 4, line 8, into one, and insert "judiciary," between "legislature" and "or" at page 4, line 12, in recognition of the fact that the Judiciary conducts internal investigations into matters relating to personnel and other administrative functions;

3. Revise paragraph (4) on page 6, at line 8, to specify instead "Immediately transfer all complaints and information collected by the office to the attorney general when the inspector general has reasonable grounds to believe there has been a violation of state criminal law;" and delete "including any allegations of criminal acts affecting the operations of state agencies and quasi-public agencies" on page 5, line 14-16, "criminal acts" on page 8, lines 18-19, and page 9, lines 4 and 7, and subsection (b) on page 11, lines 1-7;

4. Substitute provisions like those included in section 28-2.5, HRS, for the provisions of section ___-6, Subpoena powers, on page 11, lines 8-13, to subpoena witnesses, examine them under oath, and require the production of any books, papers, documents, or other objects designated therein or any other record however maintained that are relevant or material to

an investigation the Inspector General conducts, and delete the first two sentences of subsection (c) on page 10, at lines 1-9;

5. Clarify or identify what "additional investigations" refers to if the Legislature intends subsection (e) on page 13, lines 17-20, to extend the Inspector General's jurisdiction to investigate beyond fraud, waste, abuse, and corruption relating to the management and operation of state agencies or quasi-public agencies;

6. Add a subsection to section __-3, Powers and duties of inspector general, directing that at minimum the Standards for Audits of the Federal Comptroller General direct the investigations the Inspector General conducts;

7. Add procedural safeguards, including a right to representation, and an opportunity to respond, when investigations regarding individual officers and employees may result in disciplinary action, or other adverse consequences; and

8. Add provisions to assure that investigations involving individual officers and employees and the reports prepared at the conclusion of such investigations are maintained as confidential to the extent required or permitted under the chapter 92F, HRS.

We also suggest that the Committee clarify whether persons hired to staff the Office are civil servants. Presently; by default, language at page 4, line 3, makes the Inspector General's staff civil servants. If this is not intended, include wording either in the new chapter establishing the Office, or in section 76-16, HRS, to exempt some or all of the positions from the civil service;

Thank you for the opportunity to submit testimony on this measure.

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

Submitted By	Organization	Testifier Position	Present at Hearing
Glenn Shiroma	Individual	Support	No

Comments: Testimony in STRONG SUPPORT for SB286 for the creation of Inspector General. The DLNR, Division of Boating & Ocean Recreation needs to be investigated for threaten stakeholders for speaking out on issues. Gross malfeasance in Hawaii Administrative Rule-Making under Administrative Directive 09-01 and SLH 2014, Act 68 (SB2249).

Submitted By	Organization	Testifier Position	Present at Hearing
Elen Stoops	Individual	Support	No

Comments:



March 17, 2015
2:00 PM
Conference Room 325

To: House Committee on Judiciary
Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice Chair

From: Grassroot Institute of Hawaii
President Keli'i Akina, Ph.D.

RE: SB 286 -- RELATING TO THE OFFICE OF THE STATE INSPECTOR GENERAL
Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on SB 286, which would establish the office of the State Inspector General in order to investigate complaints of fraud, waste, abuse, or corruption by state agencies, quasi-public agencies, or their employees.

Public trust in government requires that every effort be made to promote transparency and accountability at all levels. With every story of corruption, abuse of power, and financial mismanagement that comes to light, faith in our political leaders and decision makers is further eroded. The Grassroot Institute applauds this effort to encourage honest governance through the creation of an independent Office of the Inspector General.

We encourage the legislature to safeguard the integrity of the state government and the Office of the Inspector General by ensuring that it will be able to investigate possible complaints free of pressure from political interests or the agencies themselves. Moreover, the activities of the Office must also be publicly transparent, so as to remove it from any taint of political influence or retaliatory action.

Thank you for the opportunity to submit our comments.

Sincerely,
Keli'i Akina, Ph.D.
President, Grassroot Institute of Hawaii

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