



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

ON THE FOLLOWING MEASURE:

S.B. NO. 286, S.D. 1, RELATING TO THE OFFICE OF THE STATE INSPECTOR GENERAL.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Friday, February 27, 2015

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Charleen M. Aina, Deputy Attorney General

Chair Tokuda 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 to urge that the Office not be administratively attached to the Department of the Attorney General or responsible for investigating conduct that is punishable under the Penal Code, and to suggest additional revisions to minimize procedural challenges to criminal prosecutions the Attorney General commences that are based on referrals from the Inspector General, and avoid infringing on rights protected by the federal and state constitutions.

The bill proposes the establishment of an Office that is authorized to investigate, assess, review, and report on the management and operations of state executive branch agencies or quasi-public agencies, including complaints alleging fraud, waste, abuse, or corruption by state executive branch agencies or quasi-public agencies, and their officers or employees.

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 protect and promote the independence of the Inspector General, and minimize procedural challenges in criminal prosecutions the Attorney General initiates on the basis of complaints brought directly to the Department, or initially filed with the Office. Assigning the Office to an executive branch department other than the Department will physically reinforce the separation between the Inspector General and the Attorney General that the Legislature intends, and we think is critical. 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 that the following revisions be made to the bill:

1. To strengthen the Inspector General's independence:
 - a. At page 3, line 6, attach the Office to an executive branch department other than the Department of the Attorney General;
 - b. Further refine the definition of "quasi-public agency" at page 2, line 17. The reference to "chapter 42F grantees" is helpful, but as these apparently are not the only entities that the Legislature intends to subject to Inspector General investigations, either provide additional examples, or provide more characteristics with which to identify what other entities are "supported . . . by state funds." This definition is one means of defining the jurisdiction of the Inspector General, and a clearer definition of who these entities are will help the Inspector General determine whether and to what extent a particular entity has consented, or is statutorily required to allow, the State access to records and other information the Inspector General may need to complete an investigation;
 - c. Under the current version of the bill at page 4, line 3, persons hired to staff the Office are by default civil servants; if this is not intended, include wording either in the new chapter establishing the Office, or in section 76-16, Hawaii Revised Statutes (HRS), to exempt some or all of the positions from the civil service;
 - d. 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; and
 - e. 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.
2. To minimize procedural challenges to criminal prosecutions based on referrals or in any way related to investigations conducted by the Inspector General:

a. 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" on page 5, line 14, "any allegations of criminal acts" on page 8, lines 18-19, "any allegations of criminal acts," on page 9, lines 4 and 7, and "of allegations of criminal behavior" on page 11, line 4; and

b. Substitute provisions like those included in section 28-2.5, HRS, for the provisions of section 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.

3. To assure that rights protected by the federal and state constitutions and statutes, as well as collective bargaining contracts are not infringed in the course or as a result of investigations conducted by the Inspector General:

a. 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;

b. 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

c. 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.

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

SB286

Submitted on: 2/25/2015

Testimony for WAM on Feb 27, 2015 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Matson	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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