

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 83

50th Legislature, 1st Session, 2011

Tracking Number: .183196.2

Short Title: Create State Inspector General Office

Sponsor(s): Senator John M. Sapien and Representative Luciano “Lucky” Varela and Others

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Bill Summary:

Effective July 1, 2011, SB 83 creates the *State Inspector General Act*, including an Office of Government Accountability, headed by a State Inspector General.

- The State Inspector General:
 - shall be appointed by the Governor with the consent of the Senate, without consideration of political affiliation and solely on the basis of integrity and demonstrated ability in:
 - accounting;
 - auditing;
 - financial analysis;
 - law;
 - management analysis;
 - public administration; or
 - investigations;
 - shall serve for six years and may be appointed for succeeding six-year terms; and
 - may be removed by the Governor for incompetency, malfeasance, or willful neglect of duty, contingent on approval by a two-thirds vote of the members of the Senate.
- The Office of Government Accountability – charged with reviewing and approving work plans and reports relating to the inspector general, internal audits and accountability functions – shall, among other duties:
 - have the authority to audit executive branch agencies and programs, school districts, state-chartered charter schools, state educational institutions, including community colleges and branch campuses, and all other recipients of state funding, including government contractors;
 - provide an independent evaluation of the *Assessment and Accountability Act* and the *School Personnel Act* by:

- monitoring the implementation of those acts;
- verifying accuracy of reports of public school, school district, and state performance; and
- conducting studies of other states' efforts at assessment, accountability, and other educational reforms and reporting its findings to the Legislative Education Study Committee (LESC) and the Legislative Finance Committee (LFC).

SB 83 also transfers the inspectors general from various cabinet departments to the new Office of Government Accountability, including:

- effective July 1, 2011, the:
 - Public Education Department (PED);
 - Higher Education Department (HED); and
- effective July 1, 2012, the:
 - Department of Health;
 - Human Services Department;
 - Corrections Department; and
 - Children, Youth and Families Department;

In addition, SB 83 transfers duties of the Office of Education Accountability (OEA) in the Department of Finance and Administration to the new Office of Government Accountability, and it amends provisions relating to the Education Data System to remove the director of OEA from the data system council.

SB 83 also establishes a Program Evaluation Division in the LFC to conduct program evaluations, information technology evaluations, and special reviews; and the bill:

- requires agencies to provide requested information to the LFC; and
- provides that information provided by an agency under the section that is confidential by law or exempt from public inspection under the *Inspection of Public Records Act* shall not be disclosed by members of the committee, its director, or staff.

Finally, SB 83 amends the *Accountability in Government Act* to:

- require agencies to submit, as part of their budget requests, a status report to implement previous recommendations made by the LFC or the State Inspector General; and
- add a new section to the act providing that nothing in the act prevents the Legislature from changing an agency's appropriation pattern or performance measures.

Fiscal Impact:

The LFC fiscal impact report (FIR) indicates that SB 83 has a neutral fiscal impact.

Fiscal Issues:

Despite the finding of the FIR, the Office of the State Auditor (OSA) analysis indicates that an appropriation may be needed for the State Inspector General's salary and other administrative costs.

Substantive Issues:

With regard to the creation of a Program Evaluation Division of the LFC, the PED analysis of SB 83 raises several issues.

- Some of the duties of the new division appear to duplicate duties of the proposed Office of Government Accountability and duties of any remaining agency inspectors general of other state agencies.
 - For example, the new division must conduct program evaluations and special review of agencies to allow policymakers to determine “whether agencies are complying with state and federal procedures relevant to their operation and function” and to “assess the effect of agency operations on state finances.”
 - However, the new division's duties similarly relate to the Office of Government Accountability's authority “to audit and investigate executive branch agencies and programs” to ensure “efficient and effective operations, the proper use of public funding and the detection and prevention of fraud, waste and abuse.”
- “[C]onducting program evaluations and special reviews of agencies for purposes of administering and enforcing the laws would implicate the New Mexico constitution. Unwarranted legislative intrusion into the authority of the executive branch to administer appropriated monies has encountered resistance from New Mexico courts when construing New Mexico's constitution and the balance of power provided under the separation of powers provision.”

The OSA analysis indicates that the provisions in SB 83 may require agencies to provide the LFC with information that is made confidential by law, such as documents that are protected through attorney-client privilege and executive privilege.

Other Issues:

The provision in SB 83 transferring PED's inspector general to the new Office of Government Accountability conflicts with the 2011 recommendations of the LESC.

- During the 2010 interim, the LESC created the LESC School Finance Work Group to “evaluate the adequacy and effectiveness of New Mexico's laws and regulations relating to public school finance, including the financial capacity and controls of school districts and charter schools statewide.” The LESC requested updates on the progress of the work group at each interim meeting, with a final report to the LESC in December 2010.
- Among the final recommendations of the work group to the LESC was the transfer of the six positions in PED's Office of the Inspector General (OIG) to the OSA.

- As a result, on January 26, 2011, the LESC sent a letter to the chairman of the House Appropriations and Finance Committee to request that the committee consider including in the *General Appropriation Act of 2011* the transfer of the six positions in PED's OIG to the OSA, and that those positions be dedicated to education-related reviews.

- The letter noted in particular that:
 - The LESC felt that placing the six positions at OSA – rather than at another office in the executive branch – would afford the auditors the independence they need in order to fulfill their duties.

 - In addition, OSA already plays a critical role in the oversight and protection of public education funds and resources.

 - The OSA staff examines all annual financial audits of school districts and institutions of higher education, and it monitors compliance with government auditing standards, including the Statement on Auditing Standards No. 99: Consideration of Fraud in a Financial State Audit.

 - The State Auditor has also worked to bring school districts in compliance with the *Audit Act* by monitoring those districts that have failed to submit timely audits.

 - Furthermore, the OSA has called upon school districts and charter schools to take immediate corrective action on audit findings, has conducted training sessions for school board members, and has identified risk areas in certain public schools that require additional audit oversight.

 - Finally, the State Auditor's special audit of the Jemez Mountain Public Schools identified an embezzlement scheme in which the former business manager of the district stole millions of dollars.

Related Bills:

HB 66 *Transfer Depts. & Services to DFA*
HB 230 *Merge HED with DFA*