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| <b>LFC Requester:</b> | <b>Eckberg</b> |
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**SECTION I: GENERAL INFORMATION**

Check all that apply:

Original  Amendment   
 Correction  Substitute

Date Prepared: 01/27/23  
 Bill No: SB201

Sponsor: G. Munoz & B. Tallman  
 Short STATE INSPECTORS  
 Title: GENERAL ACT

Agency Name and Code  
 Number: PED - 924  
 Person Writing Gregory Frostad  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY23          | FY24 |                           |               |
| None          | None | N/A                       | NFA           |

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY23              | FY24 | FY25 |                           |               |
| None              | None | None | N/A                       | NFA           |

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

|              | FY23 | FY24    | FY25    | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|---------|---------|-------------------|---------------------------|---------------|
| <b>Total</b> | None | \$750.0 | \$787.5 | \$2,362.5         | Recurring                 | General Fund  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

**Synopsis:** Senate Bill 201 (SB201) provides for the creation of an independent and objective Office of Inspectors General (OIG) within 10 cabinet level departments in the executive branch. These departments are the Children, Youth and Families Department, New Mexico Corrections Department, Department of Health, Higher Education Department, Human Services Department, Public Education Department (PED), Department of Finance and Administration, Department of Transportation, Early Childhood Education and Care Department and the Taxation and Revenue Department.

The units created by the provisions of SB201 would be required to conduct and supervise internal audits, compliance audits, and investigations related to the programs and operations of their respective departments and some state-funded entities. They would also be required to provide coordination and make recommendations to enhance economy, efficiency and effectiveness of operations and to detect and prevent fraud, waste, and abuse.

The inspectors general within each department would be appointed by each cabinet secretary, who, along with their employees, would be classified employees. The offices would report directly to their respective Secretaries.

SB201 also creates the government accountability coordinating council, comprising the State Auditor, the Attorney General, the inspectors general of the 10 departments, and the director of the LFC. The council would be required to organize itself with a chair and a vice chair for terms of two years.

Each OIG will submit an annual work plan to the department secretary, the Government Accountability Coordinating Council (GACC) and the LFC.

On the effective date of the Act, July 1, 2023, each of the 10 departments would be required to transfer its audit and compliance functions, staff, money, appropriations, equipment, furniture, and records to the department's newly created office of inspector general.

## **FISCAL IMPLICATIONS**

The bill does not contain an appropriation.

SB201 anticipates that existing staff would be used to implement its provisions with internal staff, job functions and equipment being transferred into the new offices. The department anticipates that the impacted agencies would be able to absorb the costs associated with operating the new OIG. Because this bill requires the PED to hire a director with specific experience, the department would need to create and hire at least one new FTE to staff the director position. Further, the bill requires the OIG to conduct compliance audits and investigate the department internally and also "related state funded entities," of which there are more than 200 when school district, charter schools and the RECs are included. The audits would not be possible with existing staff. The department anticipates that an additional six staff members will be required to implement the provisions of this bill. This is projected to cost approximately \$750.0 with salaries, benefits and associated operating costs. These costs are not addressed in the bill as an appropriation and need to be considered.

While some of the OIGs audits and reviews could result in revenue generation or recovery for other departments, almost all the appropriations under the control of the PED are funds distributed to external stakeholders and any funds recovered need to be redistributed or reverted and would not be available for use by the OIG.

## **SIGNIFICANT ISSUES**

SB201 contains provisions that give the OIG unrestricted access to its department's records, data, reports, contracts, memoranda, correspondence and any other information necessary to implement the act. The several OIGs would coordinate activities with a number of other parties, including the State Auditor, Attorney General's Office, and the Legislative Finance Committee

(LFC). Further, the several Inspectors General would be members of the newly created GACC, which would be required to receive reports and other information from the OIGs. It is unclear if these requirements would impact the PED's responsibilities under the federal Family Educational Right and Privacy Act (FERPA) protections. Federal law prohibits sharing student information without demonstration of an **educational purpose**. (See the FERPA at 20 U.S.C. § 1232g; 34 CFR Part 99). The department does not agree that the financial and related audits under SB201 would meet the test of a demonstrated education purpose and thus potentially may violate FERPA.

In addition, some provisions of SB201 improperly interfere with the Governor's executive authority under Article 5, Section 4 of the New Mexico Constitution by providing that an office within an executive department coordinate activities with the State Auditor and the LFC. The state auditor is a separately elected member of the Executive branch independent of the Governor, and the LFC is part of a separate branch of government. Further, this bill requires the OIGs to submit annual workplans, annual reports, reports of investigative and individual audits, and other information to the GACC for review. In addition to the State Auditor and the director of the LFC, the coordinating council also includes the Attorney General, another separate elected official of the Executive branch, independent of the Governor. Both these requirements, in effect, place the Governor's activities, agencies, and Cabinet Secretaries under the direct review of other elected executives, as well as the Legislature, implicating constitutional issues of separation of powers.

#### **PERFORMANCE IMPLICATIONS**

None.

#### **ADMINISTRATIVE IMPLICATIONS**

Provisions of this bill would require the PED to reorganize the Audit and Accounting Bureau and Finance Analysis Bureau, adding responsibilities to existing statutory requirements.

The requirements for creating annual work plans, audit and investigation reports and participating as a member of the GACC would require substantial time and effort.

Provisions of this bill cannot be executed with existing staff. The Executive and LFC budget recommendations for PED do not include additional FTE's.

PED will need to review its body of rules in Title 6 of the New Mexico Administrative Code to address needed changes and consider new regulation to support the functions of the putative Office of Inspector General, with likely significant investment of staff time and resources needed to propose and promulgate appropriate new and amended rules.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

#### **TECHNICAL ISSUES**

None.

#### **OTHER SUBSTANTIVE ISSUES**

None.

**ALTERNATIVES**

None.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

None.

**AMENDMENTS**

None.