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# OHIO LEGISLATIVE SERVICE COMMISSION

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Office

**H.B. 311**  
**133<sup>rd</sup> General Assembly**

## Bill Analysis

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**Version:** As Reported by House State and Local Government

**Primary Sponsor:** Rep. Greenspan

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### SUMMARY

- Allows a county to contract with the State Inspector General on a limited basis for inspector general services.
- Creates a framework for the establishment of county inspectors general (CIGs) intended to closely resemble the existing State Inspector General Law and in doing so, does the following:
  - Establishes the State Commission for County Inspector General Services (Commission).
  - Requires the State Inspector General and the Commission to participate in a process to appoint a CIG to a county that requests a CIG.
  - Requires the board of county commissioners to approve a reasonable budget as requested by the CIG annually with approval from the Commission.
  - Gives a CIG jurisdiction to investigate wrongful acts and omissions by county employees under the purview of the county commissioners, convention and visitors' bureaus, community improvement corporations, private entities that receive public funds from the county commissioners, and any person who does business with these.
  - Allows the CIG, with approval of the board of county commissioners, to contract with another political subdivision to provide inspector general services in the political subdivision.
  - Specifies a process for persons to file complaints with the CIG, which the CIG must investigate if the complaint sets forth reasonable cause to believe a wrongful act or omission occurred.
  - Generally requires entities to cooperate with a CIG's investigation and provides a CIG authority to administer oaths, examine witnesses, and issue subpoenas.

- Requires a CIG to prepare a detailed written report, once an investigation is complete, containing certain information specified in the bill.
- Requires a CIG to report crimes and wrongful acts or omissions to the Governor, prosecuting authority, ethics commission, licensing agency, or appointing authority, as appropriate.
- Requires entities subject to the CIG's jurisdiction to develop, implement, and enforce policies and procedures that reduce the risk of wrongful acts and omissions – with advice from the CIG – and to modify these policies and procedures after a wrongful act or omission occurs.
- Requires state and local agencies responsible for investigating, auditing, reviewing, or evaluating the management and operation of entities subject to a CIG's jurisdiction to negotiate with a CIG to enter into agreements to share information and avoid duplicative efforts.
- Allows a CIG to employ deputy CIGs and professional, technical, and clerical staff, and to contract with experts as necessary.
- Requires a CIG to submit an annual report regarding its operations to the Governor, General Assembly, Commission, State Inspector General, and board of county commissioners.
- Allows the Commission to remove a CIG upon complaint and after a hearing.

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## **DETAILED ANALYSIS**

### **County inspectors general**

The bill creates a framework for the establishment of county inspectors general that is intended to closely resemble the existing State Inspector General Law.<sup>1</sup> A county inspector general (CIG) is an independent and autonomous entity – appointed by a state commission upon request of a county and funded by county funds – that must investigate wrongful acts or omissions by certain county employees and employees of various private entities involved with, or operating within, the county.

#### **Appointment and removal**

Upon request of a board of county commissioners,<sup>2</sup> the State Inspector General must interview candidates to serve as a CIG and recommend the three most qualified candidates to the State Commission for County Inspector General Services (Commission), which the bill creates. The Commission – consisting of the Attorney General, Auditor of State, Secretary of State, Treasurer of State, and Lieutenant Governor – must appoint the most qualified

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<sup>1</sup> R.C. 121.41 to 121.52.

<sup>2</sup> Two or more counties may request a joint CIG. R.C. 305.20(E).

individual, within 30 days, to a four-year term and may reappoint an individual to an indefinite number of subsequent four-year terms. The Commission has authority to remove a CIG from office for cause only, after providing the CIG written notice and an opportunity to be heard.<sup>3</sup>

An individual must be one of the following in order to be appointed as a CIG: an attorney, a certified public accountant, someone with at least five years' experience as a law enforcement officer, or someone with at least five years' service in a comptroller/similar position for a public or private entity. The bill prohibits any person who has been convicted of a felony or of any crime involving fraud, dishonesty, or moral turpitude from being appointed as a CIG.<sup>4</sup>

## **Jurisdiction**

A CIG has jurisdiction over the following persons within the county or counties to which the CIG was appointed:

- An employee of the board of county commissioners;
- An employee of any office, department, authority, commission, or board of the county that is appointed or employed by the board of county commissioners;
- An employee of a convention and visitors' bureau that receives county funds or lodging excise tax levy funds;
- An employee of a community improvement corporation operating within the county;
- An employee of a private institution, association, board, or corporation that receives public money from the board of county commissioners or from any officer, department, authority, commission, or board of the county that is appointed or employed by the board of county commissioners;
- Any person who does business with any of the above.

The CIG does not have jurisdiction over any elected officials.<sup>5</sup>

A CIG may enter into a contract with other political subdivisions, including other counties, to provide inspector general services in those political subdivisions for a fee. The contract must be approved by the board of county commissioners of the county where the CIG is appointed and the fee must be deposited into the county's general fund.<sup>6</sup> The contract extends the CIG's jurisdiction to the political subdivision; the employees and persons subject to

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<sup>3</sup> R.C. 121.54 (A) and (B), 305.20(G), and 318.08.

<sup>4</sup> R.C. 318.09.

<sup>5</sup> R.C. 318.02. See also R.C. 318.01 for the definitions of "county agency" and "county employee."

<sup>6</sup> R.C. 305.20(F).

the CIG's jurisdiction are the same as those listed above, as applicable to the contracting political subdivision.<sup>7</sup>

## Investigation

A CIG must investigate "wrongful acts or omissions" within the CIG's jurisdiction; a "wrongful act or omission" is "an act or omission, committed in the course of office holding or employment, that is not in accordance with the requirements of law or such standards of proper governmental conduct as are commonly accepted in the community and thereby subverts, or tends to subvert, the process of government."<sup>8</sup> The CIG must investigate an alleged wrongful act or omission after receiving a complaint that establishes reasonable cause to believe the act or omission has occurred or is occurring.<sup>9</sup> Any person who knows or has reasonable cause to believe a wrongful act or omission has been or is being committed may prepare and file a complaint with the CIG that identifies: the person making the complaint, the officer or employee who allegedly committed or is committing the wrongful act or omission, a description of the act or omission, and an explanation of how the complainant knew or came to have reasonable cause to believe that the officer or employee committed or is committing the wrongful act or omission. The CIG must prescribe a form for complaints, but no complaint is defective because it is not made on the prescribed form.<sup>10</sup> A CIG also may initiate an investigation into the management and operation of the entities under the CIG's jurisdiction.<sup>11</sup>

Entities subject to the CIG's jurisdiction are required to cooperate with and provide assistance to the CIG during an investigation, including by making their premises, equipment, personnel, books, records, and papers readily available to the CIG. The CIG and deputy CIGs may enter upon the premises of an entity at any time and without prior announcement, may question any officer or employee, and may inspect and copy any books, records, or papers of the entity, but must avoid interfering with the ongoing operations of the entities being investigated except as is reasonably necessary to the successful completion of the investigation.<sup>12</sup> A CIG may not disclose confidential information obtained during an investigation to any person who is not legally entitled to the information.<sup>13</sup>

The bill authorizes a CIG to administer oaths, examine witnesses under oath, and issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the

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<sup>7</sup> See R.C. 318.01 for the definition of a "political subdivision agency."

<sup>8</sup> R.C. 318.01(G).

<sup>9</sup> R.C. 318.02(B).

<sup>10</sup> R.C. 318.06.

<sup>11</sup> R.C. 318.02(A).

<sup>12</sup> R.C. 318.05, first, second, and third paragraphs.

<sup>13</sup> R.C. 318.07.

production of tangible evidence. If a witness disobeys a subpoena or refuses to be sworn or to answer questions, the CIG may apply to the court of common pleas for a contempt order.<sup>14</sup>

### **Written investigation reports**

Upon completing an investigation,<sup>15</sup> a CIG must prepare a detailed written report that includes the following:

- The basis for the investigation;
- The action taken in furtherance of the investigation;
- Whether the investigation revealed that there was reasonable cause to believe a wrongful act or omission had occurred;
- And, if a wrongful act or omission was identified during the investigation:
  - Identity of the person who committed the wrongful act or omission;
  - Description of the wrongful act or omission;
  - Explanation of how it was detected;
  - List of to whom the wrongful act or omission was reported; and
  - Description of what the entity where the wrongful act or omission occurred is doing to change its policies or procedures to reduce the recurrence of similar wrongful acts or omissions in the future.<sup>16</sup>

The reports generally are considered public records, except a CIG may designate all or part of a report as confidential in order to preserve the confidentiality of matters otherwise made confidential by law, to protect the safety of a witness, or to avoid disclosure of investigative techniques that would help wrongdoers avoid detection.<sup>17</sup>

The CIG must provide free copies of each written investigation report to the Governor, Commission, State Inspector General, board of county commissioners, and, as applicable, to a prosecuting authority, ethics commission, licensing agency, appointing authority, or public or private employer; any recipient of a report that is confidential or that contains confidential information must take all appropriate measures to preserve the confidentiality of the report.<sup>18</sup>

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<sup>14</sup> R.C. 318.03.

<sup>15</sup> An investigation is complete when terminated upon a finding of no reasonable cause or when a finding of reasonable cause is made and the matter is investigated through to the issue of actions taken to reduce the recurrence of similar wrongful acts or omissions. R.C. 318.02(E).

<sup>16</sup> R.C. 318.02(E).

<sup>17</sup> R.C. 318.04(A).

<sup>18</sup> R.C. 318.04(B). This requirement does not extend to any person who allegedly committed the wrongful act or omission described in the report. See also R.C. 318.07.

Any other person may request and receive from a CIG a copy of a report, but only the nonconfidential portions, after paying a fee.<sup>19</sup>

### **Report crimes, wrongful acts and omissions, to appropriate entities**

The CIG must report an alleged wrongful act or omission to the appropriate ethics commission, licensing agency, or appointing authority for possible disciplinary action. If the CIG has reasonable cause to believe a *crime* has occurred or is occurring, the CIG must contemporaneously report the suspected crime and wrongful act or omission to the Governor and to the appropriate prosecuting authority.<sup>20</sup> This reporting requirement applies even if the alleged wrongdoer is not an employee or officer that the bill gives the CIG authority to investigate.<sup>21</sup>

### **County inspector general office and budget**

The bill allows a CIG to employ deputy CIGs and professional, technical, and clerical employees as necessary. Deputy CIGs must perform duties as assigned by the CIG and serve for a term coinciding with the term of the appointing CIG. The CIG, deputy CIGs, and employees of the CIG's office are in the unclassified service of the county to which the CIG is appointed,<sup>22</sup> receive a compensation set by the CIG, and serve at the pleasure of the CIG. In addition, the CIG may contract with experts as necessary to complete investigations.

Annually,<sup>23</sup> a CIG must submit a "reasonable budget" to the board of county commissioners to provide for "reasonable compensation," office expenses, and other operations of the office including assistants and employees (see **Comment** below). The board of county commissioners must approve the budget if approved by the Commission.<sup>24</sup> In the case of a joint CIG, who was appointed to serve multiple counties, the boards of county commissioners must determine a reasonable allocation of the CIG's costs among the counties.<sup>25</sup>

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<sup>19</sup> R.C. 318.04(C). The CIG sets the fee amount, which cannot exceed the cost of reproducing and delivering the report.

<sup>20</sup> R.C. 318.02(C).

<sup>21</sup> R.C. 318.02(D). For instance, the CIG uncovers a wrongful act by an employee of a private entity that does not receive public funds and that is not considered to be "doing business" with the county or other political subdivision where the CIG has jurisdiction.

<sup>22</sup> In the case of a joint inspector general, the boards of county commissioners must determine which county employs the individuals.

<sup>23</sup> R.C. 121.54(C) specifies that the budget is annual. The bill does not specify a timeline for when the CIG must provide the budget to the Commission for approval before submitting it to the board of county commissioners.

<sup>24</sup> R.C. 121.54(C) and 305.20(C) and (D).

<sup>25</sup> R.C. 305.20(E).

A CIG has general authority to enter into contracts that are necessary to the operation of the office.<sup>26</sup>

The bill requires a CIG to deposit any money received on behalf of the county pursuant to a court order or settlement into the county treasury to the credit of the general fund.<sup>27</sup>

Annually not later than March 1, a CIG must publish a report summarizing the activities of the CIG's office during the previous calendar year. The CIG must provide the report to the Governor, General Assembly, Commission, State Inspector General, and board of county commissioners, and to any person who requests the report and pays a fee.<sup>28</sup>

### **Policies and procedures of entities subject to CIG jurisdiction**

The bill requires each entity subject to the CIG's jurisdiction to develop, implement, and enforce policies and procedures that reduce the risk of wrongful acts and omissions by its officers and employees.<sup>29</sup> A CIG must consult with each entity regarding their policies and procedures and advise the entities in the development, implementation, and enforcement of their policies and procedures.<sup>30</sup> After the CIG detects a wrongful act or omission within an entity, the CIG must review and evaluate the entity's relevant policies and procedures and advise the entity regarding changes that should be made to reduce recurrences of similar wrongful acts or omissions in the future.<sup>31</sup>

### **Agreements for shared information**

Any state or local agency that is responsible for investigating, auditing, reviewing, or evaluating the management and operation of entities subject to a CIG's jurisdiction must negotiate and enter into agreements with the CIG for the purpose of sharing information and avoiding duplication of effort.<sup>32</sup>

### **County contract with State Inspector General**

The bill allows a county that is not under the jurisdiction of a CIG to contract with the State Inspector General for a specific short-term or one-time investigation. The basis for the contract must be specified in a resolution adopted by majority vote of the board of county commissioners. A county must reimburse the State Inspector General an amount agreed to under the contract.

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<sup>26</sup> R.C. 318.08.

<sup>27</sup> R.C. 318.081.

<sup>28</sup> R.C. 318.07. The CIG sets the fee amount, which cannot exceed the cost of reproducing and delivering the report.

<sup>29</sup> R.C. 318.05.

<sup>30</sup> R.C. 318.02(H).

<sup>31</sup> R.C. 318.02(I).

<sup>32</sup> R.C. 318.05 and 318.02(F).

The jurisdiction, authority, and duties of a State Inspector General under contract with a county mirror a CIG's jurisdiction, authority, and duties.

An investigation by the State Inspector General under the bill is confidential while ongoing, and remains confidential after the fact if no reasonable cause is found — only the board of county commissioners would be aware of the investigation. If the State Inspector General finds reasonable cause to investigate, the State Inspector General's investigation report is public record (with the caveat that, any confidential portion must remain confidential).<sup>33</sup>

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## COMMENT

The bill appears to allow a CIG to set their own compensation with approval by the Commission.<sup>34</sup> If a court considers CIGs to be public officers, this provision might violate the provision of the Ohio Constitution that requires the General Assembly to set the compensation of all public officers.<sup>35</sup> Courts evaluate certain factors to determine whether a position is a public office, including whether the duties are established by law and whether the performance of those duties involves the exercise of continuing, independent, political or government functions.<sup>36</sup>

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## HISTORY

Action	Date
Introduced	07-16-19
Reported, H. State & Local Gov't	11-12-20

H0311-RH-133/ts

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<sup>33</sup> R.C. 318.01 and 121.42(G).

<sup>34</sup> See R.C. 121.54(C).

<sup>35</sup> Ohio Constitution, Article II, Section 20.

<sup>36</sup> *State ex rel. Landis v. Board of Comm'rs*, 95 Ohio St. 157 (1917).