

SESSION OF 2017

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2047

As Amended by House Committee on Health
and Human Services

Brief*

HB 2047, as amended, would enact and amend law to transfer the Office of the Inspector General (IG's Office) within the Kansas Department of Health and Environment (KDHE) to the IG's Office within the Office of the Attorney General (AG's Office). The powers, duties, functions, records, and property of the IG's Office within KDHE would be transferred to the IG's Office within the AG's Office. References to the IG's Office within KDHE in statute, contract, or other document would be deemed to apply to the IG's Office within the AG's Office. The bill would replace references to the Secretary of Health and Environment or KDHE regarding the IG's Office with the Attorney General or AG's Office, as applicable. The bill would also make technical amendments. Additional details follow.

Transfer of Inspector General's Office

The orders and directives of the IG's Office within KDHE existing on the effective date of the bill would continue in effect and be deemed to be those of the IG's Office within the AG's Office until revised, amended, repealed, or nullified. All unexpended balances of appropriations of the IG's Office within KDHE on the effective date of the bill would be transferred to the AG's Office for use by the IG's Office within the AG's Office to carry out the powers, duties, and functions transferred under the bill. The transfer would not abate any

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

suit, action, or other proceeding, judicial or administrative, lawfully commenced or which could have been commenced by or against any existing agency mentioned in the bill or against any state officer in the officer's official capacity or in relation to the discharge of the officer's official duties. No criminal actions commenced or which could have been commenced by the State would be abated by effect of this bill. The Governor would resolve any conflicts arising as to the disposition of any power, function, or duty or the unexpended balance of any appropriation as a result of any abolishment, transfer, attachment, or other change made by the bill or under the bill's authority, with the Governor's decision being final.

Definitions

The bill would clarify the definition of "attorney general" by referencing the State of Kansas. The definition of "department" referencing KDHE would be deleted.

Inspector General Position

Change in Classification, Salary, and Appointment

The Inspector General position, upon transfer to the AG's Office, would change from classified to unclassified, with an annual salary in an amount equal to the annual salary paid by the State to a district court judge. The Inspector General would be appointed by the Attorney General, instead of KDHE, and the appointment would continue to be subject to Senate confirmation. The bill would allow the Attorney General to remove the Inspector General from office for cause prior to the expiration of the Inspector General's term of office. The Inspector General would report to the Attorney General.

Duties

The bill would clarify the duties of the Inspector General would extend to oversight, audits, investigations, performance reviews, and independent and ongoing evaluations of the state's programs for Medicaid, MediKan, and the Children's Health Insurance Program or their successor programs. The bill would delete references to programs administered by KDHE, clients of KDHE, or the department and replace the language with "such a program or programs" or "state agency or agencies which administer such program or programs."

The bill would clarify the Inspector General would be required to conduct independent and ongoing evaluation of these programs or their successor programs over which the Inspector General has oversight as follows:

- Investigate fraud, waste, abuse, and illegal acts directly relating to such programs;
- Audit state programs (not only KDHE), contractors, vendors, and health care providers related to ensuring appropriate payments are made for services rendered and to the recovery of overpayments;
- Investigate fraud, waste, abuse, or illegal acts committed by clients of the programs or by consumers of services of such programs; and
- Monitor the adherence to the terms of any contract between a state agency (not only KDHE) and any organization with which the state agency has entered into a contract to make claims payments.

Access to Information

The bill would clarify the Inspector General, among other authorized access, would be required to have access to all pertinent information, confidential or otherwise, and to all

personnel and facilities of a state agency (not only KDHE) and state vendors necessary to perform the duties of the IG's Office as directly related to the programs over which the Inspector General has oversight.

Reporting and Investigation Requirements

If credible evidence of fraud, waste, abuse, or illegal acts are found, the Inspector General would be required to report its findings to the Attorney General.

The Inspector General would be required to report all convictions, terminations, and suspensions taken against vendors, contractors, and health care providers to any agency contracting with or responsible for licensing or regulating those persons or entities. In addition to other entities to which the provision of a report would be required, the Inspector General would also be required to make annual reports, findings, and recommendations regarding the IG's Office's investigations into reports of fraud, waste, abuse, and illegal acts relating to any such programs to the appropriate state agency and the Attorney General.

The bill would add civil actions to the list of those actions for which the Inspector General would be required to conduct investigations in a manner that ensures preservation of evidence. The Inspector General would be required to notify the Attorney General if the Inspector General determines a possible false claim relating to fraud in the provision or administration of the programs over which the Inspector General had oversight has occurred.

KDHE Closed Meeting with Inspector General

Language relating to KDHE recessing for a closed, executive meeting to discuss with the Inspector General any information, records, or other matters involved in any investigation or audit would be deleted, as this language is no longer applicable. The bill would add that all information and

records of the Inspector General made, maintained, or kept under any investigation or audit under the provisions of the bill would also be confidential, except as required or authorized under the bill.

Background

The bill was introduced by the House Committee on Health and Human Services at the request of Representative Ward. In the House Committee hearing, Representative Ward and representatives of the Disability Rights Center of Kansas, InterHab, the KanCare Advocates Network, and Kansas Action for Children appeared in support of the bill. The proponents generally stated the need for oversight of KanCare, the state's Medicaid program, by an independent Inspector General, as was the original intent when the IG's Office was created. The proponents noted the position has been unfilled for nearly three years.

Neutral testimony was provided by a representative of KDHE who stated KDHE has worked diligently to fill the Inspector General position, but there has been a lack of suitable candidates, resulting in the position being vacant since June 2014. The representative stated, if it is the will of the Legislature to move the Inspector General position to the AG's Office, KDHE will support that change. Written-only neutral testimony was provided by the Attorney General indicating the reorganization would be ineffective without adequate and reliable funding to hire the skilled personnel necessary to carry out the Inspector General's functions, which would require the IG's Office be fully funded from independent State General Fund (SGF) appropriations.

No opponent testimony was provided.

On February 17, 2017, the House Committee on Health and Human Services amended the bill to make a technical amendment and requested the bill, as amended, be referred to the House Committee on Appropriations for consideration.

The bill, as amended by the House Committee on Health and Human Services, was referred to the House Committee on Appropriations, which took no action on the bill and rereferred the bill to the House Committee on Health and Human Services.

On March 20, 2017, the House Committee on Health and Human Services recommended the bill favorably for passage, as amended. The amendment to the bill was the technical amendment previously adopted by the House Committee.

According to the revised fiscal note prepared by the Division of the Budget on the bill, as introduced, KDHE indicates enactment of the bill would result in the reduction of 3.00 FTE positions in FY 2018 and FY 2019, but no dollars; these positions are within KDHE, but are unfilled. In previous budgets, expenditures for the IG's Office were paid from the IG's Office SGF account. For FY 2017, \$69,689 is available in the account from a reappropriation of unexpended FY 2016 funds. No funds or expenditures were requested for this account in FY 2018 or FY 2019.

The AG's Office revised estimate for carrying out the provisions of the bill is \$476,110 from the SGF and 4.00 FTE positions in FY 2018. This amount includes \$429,847 for the salaries and wages of 1.00 Inspector General FTE position (\$155,333), 2.00 financial analyst FTE positions (\$202,942), and 1.00 legal assistant FTE position (\$71,572). The total amount also includes \$46,263 for other operating expenses, including one-time costs of \$11,830 for office furniture and IT purchases and ongoing costs of \$34,433 for office rent, travel, training, professional licensing, office supplies, and IT services. In the original fiscal note, the AG's Office had estimated total expenditures of \$318,490 from the SGF in FY 2018, which included \$279,341 for salaries and wages expenditures for 3.00 FTE positions. The AG's Office increased the estimated number of FTE positions needed by 1.00 FTE and determined it would need two financial analysts rather than a fraud analyst.

For FY 2019, total costs for the AG's Office would be \$464,280, which includes salaries and wages for 4.00 FTE positions and ongoing operating expenses. In the original fiscal note, the AG's Office estimated total expenditures for FY 2019 would be \$308,210. The AG's Office states annual expenditures could be offset as a result of savings realized from investigating and identifying fraud, waste, and abuse.

The fiscal note states that if the intent of the bill is for no fiscal effect for the SGF, the AG's Office would have to finance the new office within existing resources, or the KDHE budget would have to be reduced in an area other than the IG's Office. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2018 Governor's Budget Report*.