

Date of Hearing: March 11, 2019

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 380 (Frazier) – As Introduced February 5, 2019

SUBJECT: Office of the Transportation Inspector General

SUMMARY: Creates the Independent Office of the Transportation Inspector General (IG) to ensure that both state and external entities receiving state and federal transportation funds are operating efficiently, effectively, and in compliance with federal and state laws. Specifically, **this bill:**

- 1) Eliminates the statutorily-created Office of Audits and Investigations within the California Department of Transportation (Caltrans) and replaces it with an Independent Office of the Transportation IG as an office independent of any other administrative entity.
- 2) Requires the Governor to appoint the Transportation IG to a six-year term, subject to Senate confirmation.
- 3) Assigns to the Office of the Transportation IG the responsibility to ensure that Caltrans, the High-Speed Rail Authority (Authority), the California Highway Patrol (CHP), the Department of Motor Vehicles (DMV), the Air Resources Board (ARB), and all external entities receiving state and federal transportation funds are operating efficiently, effectively, and in compliance with federal and state laws.
- 4) Directs the Transportation IG to review policies, practices, and procedures, and conduct audits and investigations of activities involving state transportation funds.
- 5) Specifies the Transportation IG's duties to include, but not be limited to, all of the following:
 - Examining the operating practices of the state agencies under its purview to identify fraud and waste, as well as opportunities for improvements and efficiencies.
 - Identifying best practices in project delivery and recommending legislation enabling adoption of these practices when possible.
 - Providing objective analysis of and offering solutions to concerns raised by the public involving transportation infrastructure and project delivery methods.
 - Conducting, supervising, and coordinating audits and investigations relating to the programs and operations of all state transportation agencies.
- 6) Requires the Transportation IG to report all audit and confidential investigation findings and recommendations to the Secretary of Transportation, as well as report at least annually to the Governor, Legislature, and California Transportation Commission a summary of its investigation and audit findings and recommendations.

- 7) Specifies that the Transportation IG is vested with the full authority to maintain an objective audit and investigation program, including the ability to enter into contracts, establish offices, hire employees, and sue or be sued.
- 8) Establishes the annual salary of the Transportation IG on par with the Directors of various other state agencies including Caltrans, DMV, and the IG related to the California Department of Corrections and Rehabilitation (CDCR).

EXISTING LAW:

- 1) Creates the Office of Audits and Investigations within Caltrans to ensure that both Caltrans and external entities receiving state and federal transportation funds from Caltrans are operating efficiently, effectively, and in compliance with federal and state laws.
- 2) Creates an Independent Office of IG as an office independent of any other administrative entity which is responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process of CDCR.

FISCAL EFFECT: Unknown.

COMMENTS: The state collects and spends a significant amount of money to maintain and deliver a safe and efficient transportation system. According to the Legislative Analyst's Office, the state budget includes nearly \$24 billion in state and federal transportation funds for all departments and programs in 2019-20. This includes almost \$15 billion for Caltrans, nearly \$3 billion each for local streets and roads and CHP, over \$1 billion for DMV, over \$600 million for the Authority, and several billion dollars more for various other transportation programs.

In 2017, the Legislature passed and Governor Brown signed into law the Road Repair and Accountability Act (SB 1, Beall, Chapter 5), which simultaneously increased resources to help address some of the state's transportation needs while putting into place some increased accountability and oversight measures on transportation funding. While the original version of SB 1 included an Independent Office of Transportation IG akin to the proposal in this bill, the final version of SB 1 included an IG placed within Caltrans with a reduced role of ensuring only that Caltrans and the recipients of funding from Caltrans be held accountable. This compromise came about because, constitutionally, the Legislature cannot pass a bill that creates a new department with an urgency clause. Instead it passed a bill creating a new division within an existing department.

The concept of an IG to ensure efficient and effective use of taxpayer dollars is not new. In 1978, Congress established IGs for many federal departments, including the US Department of Transportation (DOT). The DOT Office of IG provides the Transportation Secretary and Congress with independent and objective reviews of the efficiency and effectiveness of federal DOT operations and programs and detects and prevents fraud, waste, and abuse. According to the DOT IG's most recent semi-annual report to Congress, over the previous 6 months the IG issued 67 audit reports with a total of 154 recommendations, including financial impacts totaling over \$71 million. The DOT IG's investigative work over that same time period resulted in 117 indictments, 34 convictions, and a total of nearly \$5 million in fines, restitutions, and recoveries.

At the state level, CDCR has an IG responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process of CDCR, conducting reviews of the delivery of

medical care at each state correctional institution, as well as determining the qualifications of candidates submitted by the governor for the position of warden. In addition, in 2009, Governor Schwarzenegger signed an executive order creating an IG to oversee the state's expenditure of federal economic stimulus funds provided through the American Recovery and Reinvestment Act (ARRA). This IG, later eliminated due to the stimulus funds being primarily spent, had a budget of \$2.8 million and 18 positions.

While similar, there are distinct and important differences between the Bureau of State Audits and the Transportation IG proposed in this bill. The State Auditor is an independent external auditor of California government's financial and operational activities directed by statute or the Joint Legislative Audit Committee. The State Auditor also administers the California Whistleblower Protection Act, which grants broad authority to perform independent investigations into complaints that state employees have engaged in improper conduct. The Transportation IG created in this bill is assigned investigations and audits of the state and local agencies' transportation-related activities, and will be self-directed so will not require statutory or legislative direction. This grants the IG the ability to investigate and recommend solutions to problems of which the Legislature may not be aware. Further, being focused solely on expenditures of state transportation resources, the IG should be able to delve deeper than the State Auditor into problems and propose more comprehensive solutions related to the state's complicated transportation delivery paradigm.

According to the author, "While the program created in SB 1 is a good first step toward oversight of the state's transportation programs, it falls short of comprehensive accountability for the roughly \$24 billion in state and federal funding spent annually on transportation in California. Recent activities related to state transportation departments other than Caltrans demonstrate the need for a statewide Transportation IG. Examples abound, from the mismanagement of DMV's rollout of Real ID, to the recent revelations of fraudulent behavior by CHP officers, to the State Auditor's findings that the Authority's flawed decision making and poor contract management have contributed to billions of dollars in cost overruns and delays. It is critical for the Legislature to institute true oversight and accountability for the tens of billions of dollars flowing each year into the development, maintenance, administration, and enforcement of the state's transportation network and traffic safety laws."

Double referral: This bill will be referred to the Assembly Accountability and Administrative Review Committee should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Southern California Partnership for Jobs

Opposition

None received.

Analysis Prepared by: Eric Thronson / TRANS. / (916) 319-2093