

February 26, 2025

Chair Kunesh, Senator Gustafson, and Committee Members,

Thank you for your work on this proposal and the opportunity to provide written testimony on Senate File 856, I am writing here with feedback from the administration. Minnesota is a state committed to both helping people and providing services that improve the lives of Minnesotans. Fraud against these public programs is unacceptable. It is not a victimless crime, and it harms the people that benefit from access to these services. The topic of establishing a statewide Office of Inspector General (OIG) is important and we greatly appreciate Senator Gustafson's leadership on this issue. With this shared interest in preventing fraud, waste, and abuse in mind, we offer the following input regarding the provisions of the bill.

Organizational Structure

We have identified several concerns with the current placement of the proposed OIG, disruption of existing agency OIGs, and the appointment process for the inspector general.

Inconsistent with Current Risks

The primary threats of fraud to the state come from criminals outside of state government attempting to defraud government programs. It is essential that an OIG be positioned to work in close partnership with agency staff who have subject matter expertise and a working knowledge of how programs function to detect and respond to suspicious activity. We are concerned this approach of introducing new distance between fraud investigation and program administrators and introducing barriers to their needed collaboration risks weakening our capacity to catch those attempting to defraud state programs.

An OIG tasked with detecting and investigating potential fraud, waste, and abuse as agencies perform executive functions should be situated for strong integration within the executive branch while maintaining due operational independence. While it may be reasonable to consider an overarching OIG similar to the one proposed in this bill, the disruption of existing agency-level expertise and capacity warrants more consideration to meet the current risks.

Inappropriate Legislative Function in Inspector General Appointment

While we appreciate the amendment adopted in Judiciary and Public Safety Committee to remove the supervisory responsibilities for the legislative commission, there remains a novel, ill-fitting, and non-advisory

role regarding the appointment of the inspector general. We are not aware of any other executive appointment that is limited to a pool of candidates selected by a legislative commission. As currently drafted the commission could go so far as to recommend just one candidate, eliminating any substantive executive role in the selection. While the Minnesota Constitution art. V sec. 3 directs a role for the Senate to advise and consent on the executive appointment of public officers, the appointment process in the bill oversteps and grants an executive role to a legislative commission. This is further supported by art. III sec. 1 which establishes that “The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.”

Departs from Proven Federal Model

Maintaining agency-specific OIG functions within the executive branch is also consistent with the federal structure established in the 1970s that has grown to 74 independent OIGs. Federal OIGs exist within the federal executive branch but maintain independence from the agencies they oversee. According to the Council of the Inspectors General on Integrity and Efficiency, in 2022 the Federal OIG community’s audit and investigative work identified potential savings to Federal programs and operations totaling over \$70 billion. For every \$1 invested in OIGs through annual appropriations, OIGs generated \$20 in potential Federal savings.

Severe Outlier in Context of Other States

Based on the Association of Inspectors General - Directory of State and Local Inspector General Agencies and supplemental research, of the 49 other states we have identified 12 (24%) have a broad or enterprise inspector general similar to the one proposed in SF 856. The remaining 37 (76%) do not. These enterprise inspectors general are executive appointed, generally by the state’s governor. Massachusetts’ is appointed by a vote of the governor, attorney general and state auditor. Tennessee’s is appointed by the Commissioner of Finance and Administration.

We have not identified any state with an inspector general with executive branch oversight responsibilities that is appointed by a legislative entity. While we appreciate the amendment removing the supervisory responsibilities of the legislative commission, a core issue remains on the legislative commission’s role in providing binding recommendations on the appointment of the inspector general. Illinois, for example, has a legislative inspector general that investigates allegations of misconduct by legislators and other legislative branch personnel.

It is also notable that states with an enterprise inspector general often also maintain agency-specific inspectors general. Of the 12 states with broad OIGs, seven also have at least one agency-specific inspector general. The remaining five appear to be fully consolidated in the enterprise inspector general. Florida has 33 agency-specific inspectors general in addition to one with an enterprise role.

Additional Attention Needed to Definition and Scope of Transfers

Currently, there are OIGs at the Department of Human Services (DHS), Department of Education (MDE), and the Department of Corrections (DOC). Portions of the DHS OIG are set to transfer to the Department of Children, Youth, and Families (DCYF) later this year. To the extent functions will collapse from existing agency OIGs to a centralized one, we strongly encourage affirmatively naming functions set to transfer rather than the current exception-based approach in the bill. This would be consistent with the approach in legislation transferring functions to DCYF (Laws of Minnesota 2023, chapter 70) and would avoid uncertainty or unintended consequences in implementation.

OIGs within these agencies take on broader responsibilities than fraud, waste, and abuse investigations. For example, the DHS OIG is responsible for background studies and licensing in addition to program integrity and we appreciate the updates to exempt this function from transfer. The MDE OIG houses the Student Maltreatment Program in addition to investigating fraud, waste, and abuse. It is unclear whether these and other functions that are currently within the purview of agency OIGs would be appropriate to transfer to the OIG established in the bill or should properly remain at the agency.

Additionally, federally funded programs at DCYF have specific program integrity and fraud investigation requirements and reporting, which are integral to rooting out fraud, waste, and abuse. Recently updated agreements and state statutes, as well as updates in progress, with the federal government (state plans) require that these functions are maintained within specified authorities and responsibilities at DCYF and DHS. Transferring these functions to a new office that is not a state agency would require significant planning and analysis of federal laws, requirements, and state plan amendments and could risk federal compliance and funding. Planning without dedicated capacity and time to complete this transfer in compliance with federal laws and regulation could also take away significant capacity of current program integrity and fraud investigation functions and expertise, impeding the efforts this proposal aims to enhance.

The bill should also outline how functions and programs that remain in the agency will interface with the OIG. For example, the bill does not transfer DHS's Medicaid program integrity team and the Medicaid provider audits and investigations team within the program integrity oversight division. The interaction between these teams and a statewide OIG should be clearly set out to clarify specific responsibilities and authorities.

Need for Clarity on Designation of OIG as Independent Entity

The bill is ambiguous on the degree to which the OIG would function within existing systems that agencies rely on for their operations. Sec. 3 would benefit from additional specificity in the declaration that the office must operate "independently of all state executive branch agencies and report directly to the chief administrative law judge" and "must not be subject to direction or interference from any executive or legislative authority, other than the chief administrative law judge."

This intent to form an entity wholly independent of the existing branches of state government raises many questions on how the office would exist regarding the following functions:

- Applicability for OIG employees to the enterprise Human Resources and Labor Relations infrastructure under the purview of MMB
- If the OIG is anticipated to receive human resources support for these functions from an individual with delegated authority from MMB under Minn. Stat. 43A
- Eligibility for SEGIP health and dental insurance and accompanying billing authority
- IT support from Minnesota IT Services (MNIT)
- Use of enterprise systems such as SWIFT and SEMA4 for payroll and human resources functions
- Authority to determine inspector general's compensation until the determinations from the 2027 Compensation Council

Potential Duplication or Overlap with OLA

The responsibilities and jurisdiction of a potential enterprise OIG should be clearly delineated to avoid overlap and ensure efficient use of resources. Current law provides that the OLA "shall see that all provisions of law respecting the appropriate and economic use of public funds and other public resources are complied with and may, as part of a financial audit or separately, investigate allegations of noncompliance." The bill establishes authority for the OIG to conduct inspections, evaluations, and investigations; recommend legislative or policy changes; and publish reports on completion of an audit or investigation summarizing findings. To avoid confusion and potential duplication, the roles of the OLA and OIG should be clearly established in statute.

Thank you for the opportunity to comment on Senate File 856. My colleagues from the administration and I are fully committed to engaging with the legislature on fraud prevention. As such, it is important to underscore that the Governor has a comprehensive fraud prevention package that is focused on strengthening investigation and enforcement authority, improving detection and oversight, and increasing criminal penalties. It is critical that the administration be given the tools that are requested in the Governor's comprehensive package.

Thank you,

A handwritten signature in black ink that reads "Erin M. Campbell". The signature is written in a cursive, flowing style.

Erin Campbell
Commissioner

CC: Legislative Auditor Judy Randall
Temporary Commissioner Shireen Gandhi, Department of Human Services
Commissioner Tikki Brown, Department of Children, Youth, and Families
Commissioner Willie Jett, Department of Education