MANAGEMENT AND BUDGET

March 19, 2025

Chair Xiong, 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 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 improving identification and investigation of fraud throughout state government is important and we greatly appreciate Senator Gustafson's leadership on this issue.

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. This comprehensive package will provide agencies with important tools to prevent, detect, and respond to suspicious activity on the front-end and react in real time when there are attempts to defraud state programs.

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."

Potential Conflict Related to Contested Case Hearings

The newly established Inspector General will report directly to the Chief Administrative Law Judge and the relationship between the Inspector General and the Office of Administrative Hearings (OAH) Chief Judge presents possible future conflicts of interest depending on due process pathways for sanctions. This raises the potential for conflict with the role of the Office of Administrative Hearings as the agency that hears contested case hearings of administrative actions and creates the risk that an OIG investigator may need to participate in an appeal before the Office of Administrative Hearings.

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. The bill author indicated the intent is not to transfer existing DHS agency positions to the new OIG, however the bill as written appears to still transfer multiple DHS and potentially DCYF program areas to the newly established OIG.

DHS serves as Minnesota's single Medicaid state agency and is required under federal law to perform certain functions such as identifying, investigating, and referring suspected fraud cases (42 CFR §§ 455.12-455.23) in addition to screening, enrolling, and terminating providers (42 CFR §§ 455.400-455.470). The language added in the Health & Human Services Committee which aims to further mitigate federal compliance risks is appreciated. Provisions that demarcate jurisdiction of Medicaid fraud investigations and referrals help address federal compliance and operational concerns. Duplicative investigatory functions would increase the likelihood for compromised investigations, undermining our shared policy goal of rooting out bad actors. Investigations conducted by an independent OIG would not alleviate DHS's responsibility under federal law to fully vet, review, and confirm findings from another entity such as an independent OIG.

DCYF has also identified the need for clarification in the language that cases of suspected fraud will be referred to external investigators as required by law, and that data obtained by the state OIG will be shared with DCYF staff to perform agency internal program integrity functions in accordance with the federal requirements in and Minnesota's federally approved state plan. DCYF is continuing to assess the 5th engrossment to determine if other concerns remain that should be addressed to ensure the bill can be implemented in a way that supports the agency's ability to address program integrity in critical programs supporting children and families.

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. Article 1, 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 and if they are to be placed in our employee classification and compensation systems
    - Use of the commissioner's plan for non-represented employees as directed in article 1, section 9
    - As established in article 1 section, what entity or entities are intended as the "state" to meet and negotiate with the exclusive representatives of transferred employees
- 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
- 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. We look forward to continuing discussions on effective ways to prevent, detect, and respond to fraud against public programs.

Thank you,

Erin Campbell
Commissioner

CC: Legislative Auditor Judy Randall
Temporary Commissioner Shireen Gandhi, Department of Human Services
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