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1 A bill to be entitled
 2 An act relating to government integrity; creating s.
 3 11.421, F.S.; creating the Florida Accountability
 4 Office within the Office of Auditor General; providing
 5 definitions; providing duties and powers of the
 6 Florida Accountability Officer; amending s. 14.32,
 7 F.S.; providing definitions; providing investigative
 8 duties to the Chief Inspector General and agency
 9 inspectors general; providing liability; amending s.
 10 17.325, F.S.; requiring certain records to be sent to
 11 the Florida Accountability Officer within a specified
 12 timeframe; amending s. 20.055, F.S.; requiring agency
 13 inspectors general to make certain determinations and
 14 reports; amending s. 110.1245, F.S.; providing
 15 requirements for awards given to employees who make a
 16 report under the Whistle-blower's Act; authorizing
 17 expenditures for such awards; amending s. 112.3187,
 18 F.S.; revising the definition of the term "gross
 19 mismanagement"; conforming provisions to changes made
 20 by the act; amending s. 287.057, F.S.; requiring
 21 certain state contracts to include a good faith
 22 estimate of gross profit; requiring a determination of
 23 reasonableness under certain conditions; prohibiting
 24 certain state employees from participating in the
 25 negotiation or award of state contracts; providing

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26 definitions; revising the list of contractual services
 27 and commodities that are not subject to competitive-
 28 solicitation requirements; requiring the Department of
 29 Management Services to establish a state contract for
 30 public service announcements; providing requirements
 31 for such contracts; amending ss. 112.3188, 112.3189,
 32 and 112.31895, F.S.; conforming provisions to changes
 33 made by the act; providing an effective date.
 34

35 Be It Enacted by the Legislature of the State of Florida:
 36

37 Section 1. Section 11.421, Florida Statutes, is created to
 38 read:

39 11.421 Florida Accountability Office.—

40 (1) There is created within the Office of Auditor General
 41 the Florida Accountability Office for the purpose of ensuring
 42 accountability and integrity in state and local government and
 43 identifying, investigating, and recommending the elimination of
 44 waste, fraud, abuse, gross mismanagement, and related misconduct
 45 in government.

46 (2) The Florida Accountability Officer shall oversee the
 47 efficient operation of the office. The Florida Accountability
 48 Officer shall be a legislative employee and serve at the
 49 pleasure of the Auditor General.

50 (3) The Auditor General shall employ qualified individuals

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51 for the office pursuant to s. 11.42.

52 (4) As used in this section, the term:

53 (a) "Abuse" means behavior that is deficient or improper
 54 when compared with behavior that a prudent person would consider
 55 a reasonable and necessary operational practice given the facts
 56 and circumstances. The term includes the misuse of authority or
 57 position for private gain.

58 (b) "Appropriations project" shall mean a specific
 59 appropriation or proviso providing funding for a specified
 60 entity that is a local government, private entity, or privately-
 61 operated program that is named or described. The term does not
 62 include an appropriation:

63 1. Specifically authorized by statute;
 64 2. Part of a statewide distribution to local governments;
 65 3. Recommended by a commission, council, or other similar
 66 entity created in statute to make annual funding
 67 recommendations, provided that such appropriation does not
 68 exceed the amount of funding recommended by the commission,
 69 council, or other similar entity;

70 4. For a specific transportation facility that was part of
 71 the Department of Transportation's 5-year work program submitted
 72 pursuant to s. 339.135;

73 5. For an education fixed capital outlay project that was
 74 submitted pursuant to s. 1031.60 or s. 1013.64; or

75 6. For a specified program, research initiative,

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76 institute, center, or similar entity at a specific state college
 77 or university recommended by the Board of Governors or the State
 78 Board of Education in their Legislative Budget Request.

79 (c) "Fraud" means obtaining something of value through
 80 willful misrepresentation, including, but not limited to, the
 81 intentional misstatements or omissions of amounts or disclosures
 82 in financial statements to deceive users of financial
 83 statements, theft of an organization's assets, bribery, or the
 84 use of one's position for personal enrichment through the
 85 deliberate misuse or misapplication of an organization's
 86 resources.

87 (d) "Misconduct" means conduct which, though not illegal,
 88 is inappropriate for a person in his or her specified position.

89 (e) "Gross Mismanagement" has the same meaning as in s.
 90 112.3187.

91 (f) "Office" means the Florida Accountability Office.

92 (g) "Waste" means the act of using or expending resources
 93 unreasonably, carelessly, extravagantly, or for no useful
 94 purpose.

95 (5) The Florida Accountability Officer may investigate a
 96 complaint alleging waste, fraud, abuse, gross mismanagement, or
 97 misconduct in connection with the expenditure of public funds.

98 (6) A complaint may be submitted to the office by any of
 99 the following persons:

100 (a) The Senate President.

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101 (b) The Speaker of the House.

102 (c) The chair of an appropriations committee in the Senate
 103 or House.

104 (d) The Auditor General.

105 (7) (a) Upon receipt of a complaint, the Florida
 106 Accountability Officer shall determine whether the complaint
 107 alleges facts supporting a reasonable suspicion of waste, fraud,
 108 abuse, mismanagement, or misconduct. The Florida Accountability
 109 Officer shall determine whether an investigation into the matter
 110 has already been initiated by a law enforcement agency, the
 111 Commission on Ethics, the Chief Financial Officer, the Office of
 112 Chief Inspector General, or the applicable agency inspector
 113 general.

114 (b) If the Florida Accountability Officer determines that
 115 the complaint does not allege facts supporting reasonable
 116 suspicion of waste, fraud, abuse, gross mismanagement, or
 117 misconduct, the Florida Accountability Officer shall notify the
 118 complainant in writing and the complaint shall be closed.

119 (c) If the complaint supports a reasonable suspicion of
 120 waste, fraud, abuse, gross mismanagement, or misconduct, the
 121 Florida Accountability Officer shall, within available
 122 resources, conduct an investigation and issue a report of the
 123 investigative findings to the complainant and to the President
 124 of the Senate and the Speaker of the House of Representatives.
 125 The Florida Accountability Officer may refer the matter to the

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126 Auditor General, the appropriate law enforcement agency, the
 127 Commission on Ethics, the Chief Financial Officer, the Office of
 128 the Chief Inspector General, or the applicable agency inspector
 129 general. The Auditor General may provide staff and other
 130 resources to assist in the investigation.

131 (8) (a) The Florida Accountability Officer, or his or her
 132 designee, may investigate the books, records, papers, documents,
 133 data, operation, and physical location of any public agency in
 134 this state and the public records of any entity that has
 135 received public funds, including any confidential information.

136 (b) Upon the request of the Florida Accountability
 137 Officer, the Legislative Auditing Committee or any committee may
 138 issue subpoenas and subpoenas duces tecum, as provided in s.
 139 11.143, to compel testimony or the production of evidence when
 140 deemed necessary to an investigation authorized in this section.
 141 Consistent with s. 11.143, such subpoenas and subpoenas duces
 142 tecum may be issued as provided by applicable legislative rules,
 143 or in the absence of applicable rules, by the chair of the
 144 Legislative Auditing Committee with the approval of the
 145 Legislative Auditing Committee and of the President of the
 146 Senate and the Speaker of the House of Representatives, or
 147 either if such officer alone designated the committee under s.
 148 1.01(17).

149 (c) If a witness fails or refuses to comply with a lawful
 150 subpoena issued pursuant to this subsection at a time when the

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151 Legislature is not in session, the Florida Accountability
 152 Officer may file a complaint before any circuit court of the
 153 state to enforce the subpoena. On the filing of such complaint,
 154 the court shall take jurisdiction of the witness and the subject
 155 matter of the complaint and shall direct the witness to respond
 156 to all lawful questions and to produce all documentary evidence
 157 in the possession of the witness which is lawfully demanded. The
 158 failure of a witness to comply with such order constitutes a
 159 direct and criminal contempt of court, and the court shall
 160 punish the witness accordingly.

161 (d) When the Legislature is in session, upon the request
 162 of the Florida Accountability Officer or the motion of a member
 163 of the Legislative Auditing Committee, either house may order
 164 compliance with the subpoena and subpoena duces tecum. Either
 165 house may punish by fine or imprisonment a witness who refuses
 166 to obey a lawful subpoena and subpoena duces tecum in accordance
 167 with S. 5, Art. III, Florida Constitution, but such imprisonment
 168 may not extend beyond the final adjournment of the session.

169 (9) The Florida Accountability Officer shall receive copies
 170 of all reports required by ss. 14.32, 17.325, and 20.055.

171 (10) Each fiscal year, the Auditor General and the Florida
 172 Accountability Officer shall conduct random audits and
 173 inspections of at least one third of the appropriations projects
 174 appropriated in the prior year. Each random audit and inspection
 175 shall include, but not be limited to, evaluating the performance

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176 of the recipient of the appropriations project and the effect
 177 and public value produced by the appropriations project.

178 Section 2. Beginning in the 2018-2019 fiscal year, the sum
 179 of \$3 million in recurring funds is appropriated from the
 180 General Revenue Fund to the Office of Auditor General to fund
 181 the operations and investigations of the Florida Accountability
 182 Office created by this act.

183 Section 3. Subsections (1) through (5) of section 14.32,
 184 Florida Statutes, are renumbered as subsections (2) through (6),
 185 respectively, and new subsections (1) and (7) are added to that
 186 section, to read:

187 14.32 Office of Chief Inspector General.—

188 (1) As used in this section, the term:

189 (a) "Abuse" means behavior that is deficient or improper
 190 when compared with behavior that a prudent person would consider
 191 a reasonable and necessary operational practice given the facts
 192 and circumstances. The term includes the misuse of authority or
 193 position for private gain.

194 (b) "Fraud" means obtaining something of value through
 195 willful misrepresentation, including, but not limited to, the
 196 intentional misstatements or omissions of amounts or disclosures
 197 in financial statements to deceive users of financial
 198 statements, theft of an organization's assets, bribery, or the
 199 use of one's position for personal enrichment through the
 200 deliberate misuse or misapplication of an organization's

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201 resources.

202 (c) "Independent contractor" has the same meaning as in s.
 203 112.3187.

204 (d) "Misconduct" means conduct which, though not illegal,
 205 is inappropriate for a person in his or her specified position.

206 (e) "Waste" means the act of using or expending resources
 207 unreasonably, carelessly, extravagantly, or for no useful
 208 purpose.

209 (7) (a) Within 6 months of the initiation of an
 210 investigation of fraud, waste, abuse, mismanagement, or
 211 misconduct in government, the Chief Inspector General or an
 212 agency inspector general must determine whether there is
 213 reasonable suspicion to believe that fraud, waste, abuse,
 214 mismanagement, or misconduct in government has occurred. If the
 215 determination is that reasonable suspicion has not been found to
 216 exist and the investigation continues, a new determination must
 217 be made every 3 months until the investigation is closed or
 218 reasonable suspicion is found to exist.

219 (b) If the Chief Inspector General or an agency inspector
 220 general determines that there is reasonable suspicion to believe
 221 a public official, independent contractor, or agency has
 222 committed fraud, waste, abuse, mismanagement, or misconduct in
 223 government, the inspector general shall report such findings to
 224 the Florida Accountability Officer and to the Commission on
 225 Ethics or proper law enforcement agency, if the commission or

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226 law enforcement agency has jurisdiction over the subject matter.
 227 (c) If the findings of an investigation conducted pursuant
 228 to this subsection conclude that a public official, independent
 229 contractor, or agency has committed fraud, waste, abuse,
 230 mismanagement, or misconduct in government, the Chief Inspector
 231 General or agency inspector general shall report such findings
 232 to the Chief Financial Officer within 30 days after the
 233 investigation is closed. Such public official, independent
 234 contractor, or person responsible within the agency is
 235 personally liable for repayment of the funds that were diverted
 236 or lost as a result of the fraud, waste, abuse, mismanagement,
 237 or misconduct in government. If the person liable fails to repay
 238 such funds voluntarily and the state does not agree to a
 239 settlement, the Chief Financial Officer shall bring a civil
 240 action to recover the funds within 60 days after receipt of such
 241 findings.

242 Section 4. Subsections (4) and (5) of section 17.325,
 243 Florida Statutes, are renumbered as subsections (5) and (6),
 244 respectively, and a new subsection (4) is added to that section,
 245 to read:

246 17.325 Governmental efficiency hotline; duties of Chief
 247 Financial Officer.—

248 (4) A copy of each suggestion or item of information
 249 received through the hotline that is logged pursuant to this
 250 section must be provided to the Florida Accountability Officer

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251 | by the 15th of each month.

252 | Section 5. Paragraph (g) is added to subsection (7) of
253 | section 20.055, Florida Statutes, to read:

254 | 20.055 Agency inspectors general.—

255 | (7) In carrying out the investigative duties and
256 | responsibilities specified in this section, each inspector
257 | general shall initiate, conduct, supervise, and coordinate
258 | investigations designed to detect, deter, prevent, and eradicate
259 | fraud, waste, mismanagement, misconduct, and other abuses in
260 | state government. For these purposes, each inspector general
261 | shall:

262 | (g) Make determinations and reports as required by s.
263 | 14.32(7).

264 | Section 6. Paragraphs (a) and (b) of subsection (1) and
265 | subsection (2) of section 110.1245, Florida Statutes, are
266 | amended, and a new subsection (6) is added to that section, to
267 | read:

268 | 110.1245 Savings sharing program; bonus payments; other
269 | awards.—

270 | (1) (a) The Department of Management Services shall adopt
271 | rules that prescribe procedures and promote a savings sharing
272 | program for an individual or group of employees who propose
273 | procedures or ideas that are adopted and that result in
274 | eliminating or reducing state expenditures, including employees
275 | reporting under the Whistle-blower's Act, if such proposals are

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276 placed in effect and may be implemented under current statutory
 277 authority.

278 (b) Each agency head shall recommend employees
 279 individually or by group to be awarded an amount of money, which
 280 amount shall be directly related to the cost savings realized.
 281 Each proposed award and amount of money must be approved by the
 282 Legislative Budget Commission, except an award under subsection
 283 (6).

284 (2) In June of each year, bonuses shall be paid to
 285 employees from funds authorized by the Legislature in an
 286 appropriation specifically for bonuses. For purposes of this
 287 subsection, awards issued under subsection (6) are not
 288 considered bonuses. Each agency shall develop a plan for
 289 awarding lump-sum bonuses, which plan shall be submitted no
 290 later than September 15 of each year and approved by the Office
 291 of Policy and Budget in the Executive Office of the Governor.
 292 Such plan shall include, at a minimum, but is not limited to:

293 (a) A statement that bonuses are subject to specific
 294 appropriation by the Legislature.

295 (b) Eligibility criteria as follows:

296 1. The employee must have been employed before ~~prior to~~
 297 July 1 of that fiscal year and have been continuously employed
 298 through the date of distribution.

299 2. The employee must not have been on leave without pay
 300 consecutively for more than 6 months during the fiscal year.

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301 3. The employee must have had no sustained disciplinary
 302 action during the period beginning July 1 through the date the
 303 bonus checks are distributed. Disciplinary actions include
 304 written reprimands, suspensions, dismissals, and involuntary or
 305 voluntary demotions that were associated with a disciplinary
 306 action.

307 4. The employee must have demonstrated a commitment to the
 308 agency mission by reducing the burden on those served,
 309 continually improving the way business is conducted, producing
 310 results in the form of increased outputs, and working to improve
 311 processes.

312 5. The employee must have demonstrated initiative in work
 313 and have exceeded normal job expectations.

314 6. The employee must have modeled the way for others by
 315 displaying agency values of fairness, cooperation, respect,
 316 commitment, honesty, excellence, and teamwork.

317 (c) A periodic evaluation process of the employee's
 318 performance.

319 (d) A process for peer input that is fair, respectful of
 320 employees, and affects the outcome of the bonus distribution.

321 (e) A division of the agency by work unit for purposes of
 322 peer input and bonus distribution.

323 (f) A limitation on bonus distributions equal to 35
 324 percent of the agency's total authorized positions. This
 325 requirement may be waived by the Office of Policy and Budget in

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326 | the Executive Office of the Governor upon a showing of
 327 | exceptional circumstances.

328 | (6) Each agency inspector general shall report employees
 329 | whose reports under the Whistle-blower's Act resulted in savings
 330 | or recovery of public funds in excess of \$1,000 to the agency
 331 | head. Whistle-blower awards shall be awarded by each agency, and
 332 | each agency head is authorized to incur expenditures to provide
 333 | such awards. The award shall be paid from the specific
 334 | appropriation or trust fund from which the savings or recovery
 335 | resulted. The agency inspector general to whom the whistle-
 336 | blower report was made or referred shall certify the identity of
 337 | the employee and, along with the agency head or his or her
 338 | designee, the savings or recovery resulting from the
 339 | investigation. If more than one employee makes a relevant
 340 | report, the award shall be shared in proportion to each
 341 | employee's contribution to the investigation as certified by the
 342 | agency inspector general. Whistle-blower awards shall be made in
 343 | the following amounts:

344 | (a) A career service employee shall receive 10 percent of
 345 | the savings or recovery certified, but not less than \$500 and
 346 | not more than a total of \$50,000 for whistle-blower reports in
 347 | any 1 year. If the employee had any fault for the misspending or
 348 | attempted misspending of public funds identified in the
 349 | investigation that resulted in the savings, the award may be
 350 | denied at the discretion of the agency head. If the award is not

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351 denied by the agency head, the award may not exceed \$500. The
 352 agency inspector general shall certify any fault on the part of
 353 the employee.

354 (b) A Senior Management Service employee or employee in a
 355 select exempt position shall receive 5 percent of the savings or
 356 recovery certified, but not more than a total of \$1,000 for
 357 whistle-blower reports in any 1 year. An employee may not
 358 receive an award under this subsection if he or she had any
 359 fault for the misspending or attempted misspending of public
 360 funds identified in the investigation that resulted in the
 361 savings or recover. The agency inspector general shall certify
 362 any fault on the part of the employee.

363 Section 7. Subsection (2), paragraph (e) of subsection
 364 (3), and paragraph (b) of subsection (5) of section 112.3187,
 365 Florida Statutes, are amended to read:

366 112.3187 Adverse action against employee for disclosing
 367 information of specified nature prohibited; employee remedy and
 368 relief.—

369 (2) LEGISLATIVE INTENT.—It is the intent of the
 370 Legislature to prevent agencies or independent contractors from
 371 taking retaliatory action against an employee who reports to an
 372 appropriate agency violations of law on the part of a public
 373 employer or independent contractor that create a substantial and
 374 specific danger to the public's health, safety, or welfare. It
 375 is further the intent of the Legislature to prevent agencies or

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376 independent contractors from taking retaliatory action against
 377 any person who discloses information to an appropriate agency
 378 alleging improper use of governmental office, ~~gross~~ waste of
 379 funds, or any other abuse or ~~gross~~ neglect of duty on the part
 380 of an agency, public officer, or employee.

381 (3) DEFINITIONS.—As used in this act, unless otherwise
 382 specified, the following words or terms shall have the meanings
 383 indicated:

384 (e) "Gross Mismanagement" means a continuous or repeated
 385 pattern of neglect of managerial duty, managerial abuses,
 386 wrongful or arbitrary and capricious actions, or deceptive,
 387 fraudulent, or criminal conduct which may have a substantial
 388 adverse economic impact.

389 (5) NATURE OF INFORMATION DISCLOSED.—The information
 390 disclosed under this section must include:

391 (b) Any act or suspected act of gross mismanagement,
 392 malfeasance, misfeasance, ~~gross~~ waste of public funds, suspected
 393 or actual Medicaid fraud or abuse, or ~~gross~~ neglect of duty
 394 committed by an employee or agent of an agency or independent
 395 contractor.

396 Section 8. Subsection (1) of section 112.3188, Florida
 397 Statutes, is amended to read:

398 112.3188 Confidentiality of information given to the Chief
 399 Inspector General, internal auditors, inspectors general, local
 400 chief executive officers, or other appropriate local officials.—

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401 (1) The name or identity of any individual who discloses
 402 in good faith to the Chief Inspector General or an agency
 403 inspector general, a local chief executive officer, or other
 404 appropriate local official information that alleges that an
 405 employee or agent of an agency or independent contractor:

406 (a) Has violated or is suspected of having violated any
 407 federal, state, or local law, rule, or regulation, thereby
 408 creating and presenting a substantial and specific danger to the
 409 public's health, safety, or welfare; or

410 (b) Has committed an act of gross mismanagement,
 411 malfeasance, misfeasance, ~~gross~~ waste of public funds, or ~~gross~~
 412 neglect of duty

413
 414 may not be disclosed to anyone other than a member of the Chief
 415 Inspector General's, agency inspector general's, internal
 416 auditor's, local chief executive officer's, or other appropriate
 417 local official's staff without the written consent of the
 418 individual, unless the Chief Inspector General, internal
 419 auditor, agency inspector general, local chief executive
 420 officer, or other appropriate local official determines that:
 421 the disclosure of the individual's identity is necessary to
 422 prevent a substantial and specific danger to the public's
 423 health, safety, or welfare or to prevent the imminent commission
 424 of a crime; or the disclosure is unavoidable and absolutely
 425 necessary during the course of the audit, evaluation, or

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426 investigation.

427 Section 9. Paragraph (c) of subsection (3), subsection
 428 (4), and paragraph (a) of subsection (5) of section 112.3189,
 429 Florida Statutes, are amended to read:

430 112.3189 Investigative procedures upon receipt of whistle-
 431 blower information from certain state employees.—

432 (3) When a person alleges information described in s.
 433 112.3187(5), the Chief Inspector General or agency inspector
 434 general actually receiving such information shall within 20 days
 435 of receiving such information determine:

436 (c) Whether the information actually disclosed
 437 demonstrates reasonable cause to suspect that an employee or
 438 agent of an agency or independent contractor has violated any
 439 federal, state, or local law, rule, or regulation, thereby
 440 creating and presenting a substantial and specific danger to the
 441 public's health, safety, or welfare, or has committed an act of
 442 gross mismanagement, malfeasance, misfeasance, ~~gross~~ waste of
 443 public funds, or ~~gross~~ neglect of duty.

444 (4) If the Chief Inspector General or agency inspector
 445 general under subsection (3) determines that the information
 446 disclosed is not the type of information described in s.
 447 112.3187(5), or that the source of the information is not a
 448 person who is an employee or former employee of, or an applicant
 449 for employment with, a state agency, as defined in s. 216.011,
 450 or that the information disclosed does not demonstrate

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451 reasonable cause to suspect that an employee or agent of an
 452 agency or independent contractor has violated any federal,
 453 state, or local law, rule, or regulation, thereby creating and
 454 presenting a substantial and specific danger to the public's
 455 health, safety, or welfare, or has committed an act of gross
 456 mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public
 457 funds, or ~~gross~~ neglect of duty, the Chief Inspector General or
 458 agency inspector general shall notify the complainant of such
 459 fact and copy and return, upon request of the complainant, any
 460 documents and other materials that were provided by the
 461 complainant.

462 (5) (a) If the Chief Inspector General or agency inspector
 463 general under subsection (3) determines that the information
 464 disclosed is the type of information described in s.
 465 112.3187(5), that the source of the information is from a person
 466 who is an employee or former employee of, or an applicant for
 467 employment with, a state agency, as defined in s. 216.011, and
 468 that the information disclosed demonstrates reasonable cause to
 469 suspect that an employee or agent of an agency or independent
 470 contractor has violated any federal, state, or local law, rule,
 471 or regulation, thereby creating a substantial and specific
 472 danger to the public's health, safety, or welfare, or has
 473 committed an act of gross mismanagement, malfeasance,
 474 misfeasance, ~~gross~~ waste of public funds, or ~~gross~~ neglect of
 475 duty, the Chief Inspector General or agency inspector general

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476 making such determination shall then conduct an investigation,
 477 unless the Chief Inspector General or the agency inspector
 478 general determines, within 30 days after receiving the
 479 allegations from the complainant, that such investigation is
 480 unnecessary. For purposes of this subsection, the Chief
 481 Inspector General or the agency inspector general shall consider
 482 the following factors, but is not limited to only the following
 483 factors, when deciding whether the investigation is not
 484 necessary:

485 1. The gravity of the disclosed information compared to
 486 the time and expense of an investigation.

487 2. The potential for an investigation to yield
 488 recommendations that will make state government more efficient
 489 and effective.

490 3. The benefit to state government to have a final report
 491 on the disclosed information.

492 4. Whether the alleged whistle-blower information
 493 primarily concerns personnel practices that may be investigated
 494 under chapter 110.

495 5. Whether another agency may be conducting an
 496 investigation and whether any investigation under this section
 497 could be duplicative.

498 6. The time that has elapsed between the alleged event and
 499 the disclosure of the information.

500 Section 10. Paragraph (a) of subsection (3) of section

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501 112.31895, Florida Statutes, is amended to read:

502 112.31895 Investigative procedures in response to
503 prohibited personnel actions.—

504 (3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

505 (a) The Florida Commission on Human Relations, in
506 accordance with this act and for the sole purpose of this act,
507 is empowered to:

508 1. Receive and investigate complaints from employees
509 alleging retaliation by state agencies, as the term "state
510 agency" is defined in s. 216.011.

511 2. Protect employees and applicants for employment with
512 such agencies from prohibited personnel practices under s.
513 112.3187.

514 3. Petition for stays and petition for corrective actions,
515 including, but not limited to, temporary reinstatement.

516 4. Recommend disciplinary proceedings pursuant to
517 investigation and appropriate agency rules and procedures.

518 5. Coordinate with the Chief Inspector General in the
519 Executive Office of the Governor and the Florida Commission on
520 Human Relations to receive, review, and forward to appropriate
521 agencies, legislative entities, or the Department of Law
522 Enforcement disclosures of a violation of any law, rule, or
523 regulation, or disclosures of gross mismanagement, malfeasance,
524 misfeasance, nonfeasance, neglect of duty, or ~~gross~~ waste of
525 public funds.

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526 6. Review rules pertaining to personnel matters issued or
 527 proposed by the Department of Management Services, the Public
 528 Employees Relations Commission, and other agencies, and, if the
 529 Florida Commission on Human Relations finds that any rule or
 530 proposed rule, on its face or as implemented, requires the
 531 commission of a prohibited personnel practice, provide a written
 532 comment to the appropriate agency.

533 7. Investigate, request assistance from other governmental
 534 entities, and, if appropriate, bring actions concerning,
 535 allegations of retaliation by state agencies under subparagraph
 536 1.

537 8. Administer oaths, examine witnesses, take statements,
 538 issue subpoenas, order the taking of depositions, order
 539 responses to written interrogatories, and make appropriate
 540 motions to limit discovery, pursuant to investigations under
 541 subparagraph 1.

542 9. Intervene or otherwise participate, as a matter of
 543 right, in any appeal or other proceeding arising under this
 544 section before the Public Employees Relations Commission or any
 545 other appropriate agency, except that the Florida Commission on
 546 Human Relations must comply with the rules of the commission or
 547 other agency and may not seek corrective action or intervene in
 548 an appeal or other proceeding without the consent of the person
 549 protected under ss. 112.3187-112.31895.

550 10. Conduct an investigation, in the absence of an

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551 allegation, to determine whether reasonable grounds exist to
 552 believe that a prohibited action or a pattern of prohibited
 553 action has occurred, is occurring, or is to be taken.

554 Section 11. Paragraph (e) of subsection (3) and subsection
 555 (9) of section 287.057, Florida Statutes, are amended, and new
 556 subsections (24) and (25) are added to that section, to read:

557 287.057 Procurement of commodities or contractual
 558 services.—

559 (3) If the purchase price of commodities or contractual
 560 services exceeds the threshold amount provided in s. 287.017 for
 561 CATEGORY TWO, purchase of commodities or contractual services
 562 may not be made without receiving competitive sealed bids,
 563 competitive sealed proposals, or competitive sealed replies
 564 unless:

565 (e) The following contractual services and commodities are
 566 not subject to the competitive-solicitation requirements of this
 567 section:

568 1. Artistic services. As used in this subsection, the term
 569 "artistic services" does not include advertising or typesetting.
 570 As used in this subparagraph, the term "advertising" means the
 571 making of a representation in any form in connection with a
 572 trade, business, craft, or profession in order to promote the
 573 supply of commodities or services by the person promoting the
 574 commodities or contractual services.

575 2. Academic program reviews if the fee for such services

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576 | does not exceed \$50,000.
 577 | 3. Lectures by individuals.
 578 | 4. Legal services, including attorney, paralegal, expert
 579 | witness, appraisal, or mediator services.
 580 | 5. Health services involving examination, diagnosis,
 581 | treatment, prevention, medical consultation, or administration.
 582 | The term also includes, but is not limited to, substance abuse
 583 | and mental health services involving examination, diagnosis,
 584 | treatment, prevention, or medical consultation if such services
 585 | are offered to eligible individuals participating in a specific
 586 | program that qualifies multiple providers and uses a standard
 587 | payment methodology. Reimbursement of administrative costs for
 588 | providers of services purchased in this manner are also exempt.
 589 | For purposes of this subparagraph, the term "providers" means
 590 | health professionals and health facilities, or organizations
 591 | that deliver or arrange for the delivery of health services.
 592 | 6. Services provided to persons with mental or physical
 593 | disabilities by not-for-profit corporations that have obtained
 594 | exemptions under s. 501(c)(3) of the United States Internal
 595 | Revenue Code or when such services are governed by Office of
 596 | Management and Budget Circular A-122. However, in acquiring such
 597 | services, the agency shall consider the ability of the vendor,
 598 | past performance, willingness to meet time requirements, and
 599 | price.
 600 | 7. Medicaid services delivered to an eligible Medicaid

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601 recipient unless the agency is directed otherwise in law.
 602 8. Family placement services.
 603 9. Prevention services related to mental health, including
 604 drug abuse prevention programs, child abuse prevention programs,
 605 and shelters for runaways, operated by not-for-profit
 606 corporations. However, in acquiring such services, the agency
 607 shall consider the ability of the vendor, past performance,
 608 willingness to meet time requirements, and price.
 609 10. Training and education services provided to injured
 610 employees pursuant to s. 440.491(6).
 611 11. Contracts entered into pursuant to s. 337.11.
 612 12. Services or commodities provided by governmental
 613 entities.
 614 13. ~~Statewide~~ Public service announcement programs
 615 ~~provided by a Florida statewide nonprofit corporation under s.~~
 616 ~~501(c)(6) of the Internal Revenue Code~~ which have a guaranteed
 617 documented match of at least \$3 to \$1.
 618 (9) An agency shall not divide the solicitation of
 619 commodities or contractual services so as to avoid the
 620 requirements of subsections (1)-(3) or subsection (24).
 621 (24) (a) For any contract in excess of \$50,000 that is
 622 awarded through an invitation to negotiate or awarded without
 623 competitive solicitation under paragraph (3) (c) or paragraph
 624 (3) (e) or subsection (10), the proposal, offer, or response of
 625 the contractor must include a good faith estimate of gross

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626 profit for each year of the proposed contract, including renewal
 627 years. If, in determining the good faith estimate of gross
 628 profit, the contractor includes the cost of products or services
 629 expected to be provided by a participant closely associated with
 630 the contractor, the contractor must also identify such
 631 participant, describe the association, and provide a good faith
 632 estimate of gross profit for such participant for each year of
 633 the contract, which must be attested to by an authorized
 634 representative of the participant. If the estimate of gross
 635 profit for any contractor and all such participants exceeds 15
 636 percent of the total expected receipts in any 1 year, the agency
 637 must, before awarding the contract, make a written determination
 638 that the estimated gross profit is not excessive and specify the
 639 reasons for such determination. Notwithstanding any provision of
 640 the contract, a contractor is liable to the agency for three
 641 times the amount or value of any misrepresentation of estimated
 642 gross profit as liquidated damages for such misrepresentation.

643 (b) For purposes of this subsection, the term:

644 1. "Closely associated with the contractor" means the
 645 contractor, principal of the contractor, or a family member or
 646 business associate of a principal of the contractor is a
 647 principal of the participant. "Principal" means a person who
 648 owns at least 5 percent interest in the business or entity or is
 649 a manager of the business or entity. "Business associate" means
 650 a person or entity with whom a principal of the contractor has

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651 substantial investment, employment, or partnership interests.

652 2. "Good faith estimate of gross profit" means a good
 653 faith estimate of the total receipts expected under the contract
 654 less the cost of providing contracted commodities and services
 655 under the contract, not including overhead costs. "Overhead
 656 costs" means all costs not directly related to contract
 657 performance, including, but not limited to, marketing and
 658 administrative expenses.

659 3. "Participant" means a person or entity with whom the
 660 contractor expects to subcontract with for services or
 661 commodities in carrying out a contract with an agency.

662 (25) Notwithstanding any other provision of law, a state
 663 employee who is registered to lobby the Legislature, other than
 664 an agency head, may not participate in the negotiation or award
 665 of any contract required or expressly funded under a specific
 666 legislative appropriation or proviso in an appropriation act.

667 Section 12. This act shall take effect July 1, 2018.