

By Senator Atwater

25-1487-03

1                                   A bill to be entitled  
2           An act relating to inspectors general; amending  
3           s. 14.32, F.S.; allowing the Chief Inspector  
4           General to reallocate staff and other resources  
5           among agency inspectors general to accomplish  
6           stated purposes; amending s. 20.055, F.S.;  
7           granting to agency inspectors general the  
8           authority to subpoena documents; requiring the  
9           inspectors general to use procedures other than  
10          subpoenas to obtain information from state  
11          agencies; amending ss. 112.3187, 112.3188,  
12          112.3189, 112.31895, F.S.; amending selected  
13          provisions of the "Whistle-blower's Act";  
14          amending the description of information the  
15          disclosure of which is subject to the act;  
16          amending the description of information for  
17          which confidentiality is to be provided under  
18          the act; amending the description of matters to  
19          be established through investigative procedures  
20          under the act; providing additional  
21          responsibilities of the agency inspectors  
22          general; revising a deadline for determining  
23          whether certain discharged employees should be  
24          temporarily reinstated; providing an effective  
25          date.

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27 Be It Enacted by the Legislature of the State of Florida:

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29           Section 1. Paragraph (1) is added to subsection (2) of  
30 section 14.32, Florida Statutes, to read:

31           14.32 Office of Chief Inspector General.--

1           (2) The Chief Inspector General shall:

2           (1) Reallocate staff and other resources among  
3 inspectors general in agencies under the Governor's  
4 jurisdiction, as necessary to accomplish the mission described  
5 in this section and s. 20.055.

6           Section 2. Subsection (6) of section 20.055, Florida  
7 Statutes, is amended to read:

8           20.055 Agency inspectors general.--

9           (6) In carrying out the investigative duties and  
10 responsibilities specified in this section, each inspector  
11 general shall initiate, conduct, supervise, and coordinate  
12 investigations designed to detect, deter, prevent, and  
13 eradicate fraud, waste, mismanagement, misconduct, and other  
14 abuses in state government. For these purposes, each inspector  
15 general ~~state agency~~ shall:

16           (a) Receive complaints and coordinate all activities  
17 of the agency as required by the Whistle-blower's Act pursuant  
18 to ss. 112.3187-112.31895.

19           (b) Receive and consider the complaints which do not  
20 meet the criteria for an investigation under the  
21 Whistle-blower's Act and conduct, supervise, or coordinate  
22 such inquiries, investigations, or reviews as the inspector  
23 general deems appropriate.

24           (c) Report expeditiously to the Department of Law  
25 Enforcement or other law enforcement agencies, as appropriate,  
26 whenever the inspector general has reasonable grounds to  
27 believe there has been a violation of criminal law.

28           (d) Conduct investigations and other inquiries free of  
29 actual or perceived impairment to the independence of the  
30 inspector general or the inspector general's office. This  
31 shall include freedom from any interference with

1 investigations and timely access to records and other sources  
2 of information.

3 (e) Require by subpoena the production of all  
4 information, documents, reports, answers, records, accounts,  
5 papers, and other data and documentary evidence necessary in  
6 the performance of the functions assigned by this act, which  
7 subpoena, in the case of contumacy or refusal to obey, is  
8 enforceable by order of any appropriate state court of  
9 competent jurisdiction. However, the inspector general shall  
10 use procedures other than subpoenas to obtain documents and  
11 information from state agencies.

12 (f)~~(e)~~ Submit in a timely fashion final reports on  
13 investigations conducted by the inspector general to the  
14 agency head, except for whistle-blower's investigations, which  
15 shall be conducted and reported pursuant to s. 112.3189.

16 Section 3. Paragraph (b) of subsection (5) of section  
17 112.3187, Florida Statutes, is amended to read:

18 112.3187 Adverse action against employee for  
19 disclosing information of specified nature prohibited;  
20 employee remedy and relief.--

21 (5) NATURE OF INFORMATION DISCLOSED.--The information  
22 disclosed under this section must include:

23 (b) Any act or suspected act of gross mismanagement,  
24 gross malfeasance, gross misfeasance, gross waste of public  
25 funds, ~~suspected or actual Medicaid fraud or abuse,~~ or gross  
26 neglect of duty committed by an employee or agent of an agency  
27 or independent contractor.

28 Section 4. Paragraph (b) of subsection (1) of section  
29 112.3188, Florida Statutes, is amended to read:

30 112.3188 Confidentiality of information given to the  
31 Chief Inspector General, internal auditors, inspectors

1 general, local chief executive officers, or other appropriate  
2 local officials.--

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

8 (b) Has committed an act of gross mismanagement, gross  
9 malfeasance, gross misfeasance, gross waste of public funds,  
10 or gross neglect of duty

11  
12 may not be disclosed to anyone other than a member of the  
13 Chief Inspector General's, agency inspector general's,  
14 internal auditor's, local chief executive officer's, or other  
15 appropriate local official's staff without the written consent  
16 of the individual, unless the Chief Inspector General,  
17 internal auditor, agency inspector general, local chief  
18 executive officer, or other appropriate local official  
19 determines that: the disclosure of the individual's identity  
20 is necessary to prevent a substantial and specific danger to  
21 the public's health, safety, or welfare or to prevent the  
22 imminent commission of a crime; or the disclosure is  
23 unavoidable and absolutely necessary during the course of the  
24 audit, evaluation, or investigation.

25 Section 5. Paragraph (c) of subsection (3), subsection  
26 (4), paragraph (a) of subsection (5), paragraph (b) of  
27 subsection (6), subsection (7), and paragraphs (a) and (d) of  
28 subsection (9) of section 112.3189, Florida Statutes, are  
29 amended to read:

30 112.3189 Investigative procedures upon receipt of  
31 whistle-blower information from certain state employees.--

1           (3) When a person alleges information described in s.  
2 112.3187(5), the Chief Inspector General or agency inspector  
3 general actually receiving such information shall within 20  
4 days of receiving such information determine:

5           (c) Whether the information actually disclosed  
6 demonstrates reasonable cause to suspect that an employee or  
7 agent of an agency or independent contractor has violated any  
8 federal, state, or local law, rule, or regulation, thereby  
9 creating and presenting a substantial and specific danger to  
10 the public's health, safety, or welfare, or has committed an  
11 act of gross mismanagement, gross malfeasance, gross  
12 misfeasance, gross waste of public funds, or gross neglect of  
13 duty.

14           (4) If the Chief Inspector General or agency inspector  
15 general under subsection (3) determines that the information  
16 disclosed is not the type of information described in s.  
17 112.3187(5), or that the source of the information is not a  
18 person who is an employee or former employee of, or an  
19 applicant for employment with, a state agency, as defined in  
20 s. 216.011, or that the information disclosed does not  
21 demonstrate reasonable cause to suspect that an employee or  
22 agent of an agency or independent contractor has violated any  
23 federal, state, or local law, rule, or regulation, thereby  
24 creating and presenting a substantial and specific danger to  
25 the public's health, safety, or welfare, or has committed an  
26 act of gross mismanagement, gross malfeasance, gross  
27 misfeasance, gross waste of public funds, or gross neglect of  
28 duty, the Chief Inspector General or agency inspector general  
29 shall notify the complainant of such fact and copy and return,  
30 upon request of the complainant, any documents and other  
31 materials that were provided by the complainant.

1           (5)(a) If the Chief Inspector General or agency  
2 inspector general under subsection (3) determines that the  
3 information disclosed is the type of information described in  
4 s. 112.3187(5), that the source of the information is from a  
5 person who is an employee or former employee of, or an  
6 applicant for employment with, a state agency, as defined in  
7 s. 216.011, and that the information disclosed demonstrates  
8 reasonable cause to suspect that an employee or agent of an  
9 agency or independent contractor has violated any federal,  
10 state, or local law, rule, or regulation, thereby creating a  
11 substantial and specific danger to the public's health,  
12 safety, or welfare, or has committed an act of gross  
13 mismanagement, gross malfeasance, gross misfeasance, gross  
14 waste of public funds, or gross neglect of duty, the Chief  
15 Inspector General or agency inspector general making such  
16 determination shall then conduct an investigation, unless the  
17 Chief Inspector General or the agency inspector general  
18 determines, within 30 days after receiving the allegations  
19 from the complainant, that such investigation is unnecessary.  
20 For purposes of this subsection, the Chief Inspector General  
21 or the agency inspector general shall consider the following  
22 factors, but is not limited to only the following factors,  
23 when deciding whether the investigation is not necessary:

- 24           1. The gravity of the disclosed information compared  
25 to the time and expense of an investigation.
- 26           2. The potential for an investigation to yield  
27 recommendations that will make state government more efficient  
28 and effective.
- 29           3. The benefit to state government to have a final  
30 report on the disclosed information.

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1           4. Whether the alleged whistle-blower information  
2 primarily concerns personnel practices that may be  
3 investigated under chapter 110.

4           5. Whether another agency may be conducting an  
5 investigation and whether any investigation under this section  
6 could be duplicative.

7           6. The time that has elapsed between the alleged event  
8 and the disclosure of the information.

9           (6) The agency inspector general may conduct an  
10 investigation pursuant to paragraph (5)(a) only if the person  
11 transmitting information to the agency inspector general is an  
12 employee or former employee of, or an applicant for employment  
13 with, the agency inspector general's agency. The agency  
14 inspector general shall:

15           (b) Submit to the complainant and the Chief Inspector  
16 General, within 60 days after the date on which a  
17 determination to conduct an investigation is made under  
18 paragraph (5)(a), a final written report that sets forth the  
19 agency inspector general's findings, conclusions, and  
20 recommendations, except as provided under subsection (11).  
21 The complainant shall be advised in writing by the agency head  
22 or the agency inspector general that the complainant may  
23 submit to the Chief Inspector General and agency inspector  
24 general comments on the final report within 20 days after ~~of~~  
25 the date of the report and that such comments will be attached  
26 to the final report.

27           (7) If the Chief Inspector General decides an  
28 investigation should be conducted pursuant to paragraph  
29 (5)(a), the Chief Inspector General shall either:

30           (a) Promptly transmit to the appropriate head of the  
31 state agency or the agency inspector general the information

1 with respect to which the determination to conduct an  
2 investigation was made, and such agency head shall conduct an  
3 investigation and submit to the Chief Inspector General a  
4 final written report that sets forth the agency head's  
5 findings, conclusions, and recommendations; or

6 (b)1. Conduct an investigation with respect to the  
7 information and any related matters; and

8 2. Submit to the complainant within 60 days after the  
9 date on which a determination to conduct an investigation is  
10 made under paragraph (5)(a), a final written report that sets  
11 forth the Chief Inspector General's findings, conclusions, and  
12 recommendations, except as provided under subsection (11). The  
13 complainant shall be advised in writing by the Chief Inspector  
14 General that the complainant may submit to the Chief Inspector  
15 General comments on the final report within 20 days of the  
16 date of the report and that such comments will be attached to  
17 the final report.

18 (c) The Chief Inspector General may require an agency  
19 head or agency inspector general to conduct an investigation  
20 under paragraph (a) only if the information was transmitted to  
21 the Chief Inspector General by:

22 1. An employee or former employee of, or an applicant  
23 for employment with, the agency that the information concerns;  
24 or

25 2. An employee who obtained the information in  
26 connection with the performance of the employee's duties and  
27 responsibilities.

28 (9)(a) A report required of the agency head under  
29 paragraph (7)(a) shall be submitted to the Chief Inspector  
30 General and the complainant within 60 days after the agency  
31 head or agency inspector general receives the complaint from



1 the Chief Inspector General, except as provided under  
2 subsection (11). The complainant shall be advised in writing  
3 by the agency head that the complainant may submit to the  
4 Chief Inspector General comments on the report within 20 days  
5 after ~~of~~ the date of the report and that such comments will be  
6 attached to the final report.

7 (d) If the Chief Inspector General does not receive  
8 the report of the agency head or agency inspector general  
9 within the time prescribed in paragraph (a), the Chief  
10 Inspector General may conduct the investigation in accordance  
11 with paragraph (7)(b) or request that another agency inspector  
12 general conduct the investigation in accordance with  
13 subsection (6) and shall report the complaint to the Governor,  
14 to the Joint Legislative Auditing Committee, and to the  
15 investigating agency, together with a statement noting the  
16 failure of the agency head or agency inspector general to file  
17 the required report.

18 Section 6. Paragraphs (a) and (b) of subsection (3) of  
19 section 112.31895, Florida Statutes, are amended to read:

20 112.31895 Investigative procedures in response to  
21 prohibited personnel actions.--

22 (3) CORRECTIVE ACTION AND TERMINATION OF  
23 INVESTIGATION.--

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

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

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1           2. Protect employees and applicants for employment  
2 with such agencies from prohibited personnel practices under  
3 s. 112.3187.

4           3. Petition for stays and petition for corrective  
5 actions, including, but not limited to, temporary  
6 reinstatement.

7           4. Recommend disciplinary proceedings pursuant to  
8 investigation and appropriate agency rules and procedures.

9           5. Coordinate with the Chief Inspector General in the  
10 Executive Office of the Governor and the Florida Commission on  
11 Human Relations to receive, review, and forward to appropriate  
12 agencies, legislative entities, or the Department of Law  
13 Enforcement disclosures of a violation of any law, rule, or  
14 regulation, or disclosures of gross mismanagement, gross  
15 malfeasance, gross misfeasance, ~~nonfeasance~~, gross neglect of  
16 duty, or gross waste of public funds.

17           6. Review rules pertaining to personnel matters issued  
18 or proposed by the Department of Management Services, the  
19 Public Employees Relations Commission, and other agencies,  
20 and, if the Florida Commission on Human Relations finds that  
21 any rule or proposed rule, on its face or as implemented,  
22 requires the commission of a prohibited personnel practice,  
23 provide a written comment to the appropriate agency.

24           7. Investigate, request assistance from other  
25 governmental entities, and, if appropriate, bring actions  
26 concerning, allegations of retaliation by state agencies under  
27 subparagraph 1.

28           8. Administer oaths, examine witnesses, take  
29 statements, issue subpoenas, order the taking of depositions,  
30 order responses to written interrogatories, and make  
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1 appropriate motions to limit discovery, pursuant to  
2 investigations under subparagraph 1.

3           9. Intervene or otherwise participate, as a matter of  
4 right, in any appeal or other proceeding arising under this  
5 section before the Public Employees Relations Commission or  
6 any other appropriate agency, except that the Florida  
7 Commission on Human Relations must comply with the rules of  
8 the commission or other agency and may not seek corrective  
9 action or intervene in an appeal or other proceeding without  
10 the consent of the person protected under ss.

11 112.3187-112.31895.

12           10. Conduct an investigation, in the absence of an  
13 allegation, to determine whether reasonable grounds exist to  
14 believe that a prohibited action or a pattern of prohibited  
15 action has occurred, is occurring, or is to be taken.

16           (b) Within 30 ~~15~~ days after receiving a complaint that  
17 a person has been discharged from employment allegedly for  
18 disclosing protected information under s. 112.3187, the  
19 Florida Commission on Human Relations shall review the  
20 information and determine whether temporary reinstatement is  
21 appropriate under s. 112.3187(9)(f). If the Florida Commission  
22 on Human Relations so determines, it shall apply for an  
23 expedited order from the appropriate agency or circuit court  
24 for the immediate reinstatement of the employee who has been  
25 discharged subsequent to the disclosure made under s.  
26 112.3187, pending the issuance of the final order on the  
27 complaint.

28           Section 7. This act shall take effect July 1, 2003.

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SENATE SUMMARY

Allows the Chief Inspector General to reallocate staff and other resources among agency inspectors general to accomplish stated purposes. Grants to agency inspectors general the authority to subpoena documents. Requires the inspectors general to use procedures other than subpoenas to obtain information from state agencies. Amends portions of the "Whistle-blower's Act." Amends the description of information the disclosure of which is subject to the act and information for which confidentiality is to be provided under the act. Amends the description of matters to be established through investigative procedures. Provides additional responsibilities of the agency inspectors general. Revises a deadline for determining whether certain employees should be temporarily reinstated.