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1                   A bill to be entitled  
2           An act relating to the Whistle-blower's Act; amending s.  
3           112.3187, F.S.; revising legislative intent; defining the  
4           terms "gross misconduct" and "state agency"; making  
5           editorial changes; revising provisions relating to persons  
6           the act protects; including additional persons who may  
7           file a complaint; revising relief that must be included  
8           for certain actions; providing a defense to certain  
9           actions; amending s. 112.3188, F.S.; revising acts that  
10          are actionable under the act; providing that the identity  
11          of the complainant may be provided to the Florida  
12          Commission on Human Relations; amending s. 112.3189, F.S.,  
13          relating to investigative procedures upon receipt of  
14          whistle-blower information from certain state employees;  
15          revising applicability to include certain employees;  
16          requiring the heads of state agencies to consult with the  
17          Chief Inspector General on certain matters; providing that  
18          the Chief Inspector General may require certain persons to  
19          conduct an investigation; providing for certain duties of  
20          the agency head to be performed by the inspector general;  
21          revising certain reporting requirements; amending s.  
22          112.31895, F.S., relating to investigative procedures in  
23          response to prohibited personnel actions; conforming  
24          provisions; amending s. 20.055, F.S.; conforming a cross-  
25          reference; providing an effective date.

26  
27   Be It Enacted by the Legislature of the State of Florida:  
28

29 Section 1. Section 112.3187, Florida Statutes, is amended  
 30 to read:

31 112.3187 Adverse action against employee for disclosing  
 32 information of specified nature prohibited; employee remedy and  
 33 relief.--

34 (1) SHORT TITLE.--Sections 112.3187-112.31895 may be cited  
 35 as the "Whistle-blower's Act."

36 (2) LEGISLATIVE INTENT.--It is the intent of the  
 37 Legislature to prevent agencies or independent contractors from  
 38 taking retaliatory action against an employee who reports to an  
 39 appropriate agency violations of law on the part of a public  
 40 employer or independent contractor that create a substantial and  
 41 specific danger to the public's health, safety, or welfare. It  
 42 is further the intent of the Legislature to prevent agencies or  
 43 independent contractors from taking retaliatory action against  
 44 any person who discloses information to an appropriate agency  
 45 alleging any act or suspected act of gross mismanagement, gross  
 46 misconduct ~~improper use of governmental office~~, gross waste of  
 47 public funds, or ~~any other abuse or~~ gross neglect of duty on the  
 48 part of an agency, public officer, or employee.

49 (3) DEFINITIONS.--As used in this act, unless otherwise  
 50 specified, the following words or terms shall have the meanings  
 51 indicated:

52 (a) "Agency" means any state, regional, county, local, or  
 53 municipal government entity, whether executive, judicial, or  
 54 legislative; any official, officer, department, division,  
 55 bureau, commission, authority, or political subdivision therein;  
 56 or any public school, community college, or state university.

57 (b) "Employee" means a person who performs services for,  
58 and under the control and direction of, or contracts with, an  
59 agency or independent contractor for wages or other  
60 remuneration.

61 (c) "Adverse personnel action" means the discharge,  
62 suspension, transfer, or demotion of any employee or the  
63 withholding of bonuses, the reduction in salary or benefits, or  
64 any other adverse action taken against an employee within the  
65 terms and conditions of employment by an agency or independent  
66 contractor.

67 (d) "Independent contractor" means a person, other than an  
68 agency, engaged in any business and who enters into a contract,  
69 including a provider agreement, with an agency.

70 (e) "Gross mismanagement" means a continuous pattern of  
71 managerial abuses, wrongful or arbitrary and capricious actions,  
72 or fraudulent or criminal conduct which may have a substantial  
73 adverse economic impact.

74 (f) "Gross misconduct" means a willful, wanton, or  
75 flagrant transgression of law or established rule which is of  
76 such a degree or recurrence as to show a substantial disregard  
77 of the employer's interests or the employee's duties and  
78 obligations to the public.

79 (g) "State agency" means any official, officer,  
80 commission, board, authority, council, committee, or department  
81 of the executive branch of state government. For purposes of  
82 chapters 215 and 216, "state agency" or "agency" includes, but  
83 is not limited to, state attorneys, public defenders, the  
84 capital collateral regional counsels, the Justice Administrative

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85 Commission, the Florida Housing Finance Corporation, and the  
86 Florida Public Service Commission. Solely for the purposes of  
87 implementing s. 19(h), Art. III of the State Constitution, the  
88 terms "state agency" or "agency" include the judicial branch.

89 (4) ACTIONS PROHIBITED.--

90 (a) An agency or independent contractor shall not dismiss,  
91 discipline, or take any other adverse personnel action against  
92 an employee for disclosing information pursuant to the  
93 provisions of this section.

94 (b) An agency or independent contractor shall not take any  
95 adverse action that affects the rights or interests of a person  
96 in retaliation for the person's disclosure of information under  
97 this section.

98 (c) The provisions of this subsection shall not be  
99 applicable when an employee or person discloses information  
100 known, or information that reasonably should have been known, by  
101 the employee or person to be false.

102 ~~(5) NATURE OF INFORMATION DISCLOSED. The information~~  
103 ~~disclosed under this section must include:~~

104 ~~(a) Any violation or suspected violation of any federal,~~  
105 ~~state, or local law, rule, or regulation committed by an~~  
106 ~~employee or agent of an agency or independent contractor which~~  
107 ~~creates and presents a substantial and specific danger to the~~  
108 ~~public's health, safety, or welfare.~~

109 ~~(b) Any act or suspected act of gross mismanagement,~~  
110 ~~malfeasance, misfeasance, gross waste of public funds, suspected~~  
111 ~~or actual Medicaid fraud or abuse, or gross neglect of duty~~

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112 ~~committed by an employee or agent of an agency or independent~~  
 113 ~~contractor.~~

114 (5)~~(6)~~ TO WHOM INFORMATION DISCLOSED.--The information  
 115 disclosed under this section must be disclosed to one of the  
 116 following:

117 (a) Any agency or federal governmental ~~government~~ entity  
 118 other than those specified in paragraph (b), granted ~~having~~ the  
 119 authority to investigate, police, manage, or otherwise remedy  
 120 the violation or act, except that if the individual disclosing  
 121 the information is employed by the agency to which the  
 122 disclosure relates, the disclosure must be made pursuant to  
 123 paragraph (b), paragraph (c), or paragraph (d); ~~including, but~~  
 124 ~~not limited to,~~

125 (b) The Office of the Chief Inspector General, an agency  
 126 inspector general or the employee designated as agency inspector  
 127 general under s. 112.3189(1), or inspectors general under s.  
 128 20.055; ~~or~~

129 (c) The Florida Commission on Human Relations; ~~or, and~~

130 (d) The whistle-blower's hotline created under s.  
 131 112.3189.

132  
 133 Information disclosed to any other person shall not qualify for  
 134 protection under this act. However, for disclosures concerning a  
 135 local governmental entity, including any regional, county, or  
 136 municipal entity, special district, community college district,  
 137 or school district or any political subdivision of any of the  
 138 foregoing, the information must be disclosed to a chief

139 executive officer as defined in s. 447.203(9) or other  
 140 appropriate local official.

141 (6) NATURE OF INFORMATION DISCLOSED.--The information  
 142 disclosed pursuant to subsection (5) must include one of the  
 143 following:

144 (a) Any violation or reasonably suspected violation of any  
 145 federal, state, or local law, rule, or regulation committed by  
 146 an employee or agent of an agency or independent contractor  
 147 which creates and presents a substantial and specific danger to  
 148 the public's health, safety, or welfare.

149 (b) Any act or reasonably suspected act of gross  
 150 mismanagement, gross misconduct, gross waste of public funds,  
 151 suspected or actual Medicaid fraud or abuse, or gross neglect of  
 152 duty committed by an employee or agent of an agency or  
 153 independent contractor.

154  
 155 Any information disclosed by an employee or former employee of  
 156 an independent contractor must pertain to provisions of the  
 157 contract between the agency and the independent contractor.

158 (7) EMPLOYEES AND PERSONS PROTECTED.--This section  
 159 protects employees of a state agency or independent contractor  
 160 and persons who disclose information pursuant to subsections (5)  
 161 and (6), by one or more of the following methods:

162 (a) On their own initiative by submitting ~~in~~ a written and  
 163 signed complaint;

164 (b) Who are requested to participate in an investigation,  
 165 hearing, or other inquiry relating to this act which is being

166 conducted by any agency or federal governmental ~~government~~  
 167 entity;

168 (c) Who refuse to participate in any adverse action  
 169 prohibited by this section; ~~or~~

170 (d) Who initiate a complaint through the whistle-blower's  
 171 hotline and provide his or her name and contact information; ~~or~~  
 172 ~~the hotline of the Medicaid Fraud Control Unit of the Department~~  
 173 ~~of Legal Affairs; or~~

174 (e) Employees who file any written and signed complaint to  
 175 their supervisory officials; or

176 (f) Employees who submit a written and signed complaint to  
 177 the Chief Inspector General in the Executive Office of the  
 178 Governor, to the employee designated as agency inspector general  
 179 under s. 112.3189(1), or to the Florida Commission on Human  
 180 Relations.

181  
 182 The provisions of this section may not be used by a person while  
 183 he or she is under the care, custody, or control of the state  
 184 correctional system or, after release from the care, custody, or  
 185 control of the state correctional system, with respect to  
 186 circumstances that occurred during any period of incarceration.

187 No remedy or other protection under ss. 112.3187-112.31895  
 188 applies to any person who has committed or intentionally  
 189 participated in committing the violation or suspected violation  
 190 for which protection under ss. 112.3187-112.31895 is being  
 191 sought.

192 (8) REMEDIES.--

193 (a) Any employee of or applicant for employment with any  
 194 state agency, or any employee of an independent contractor with  
 195 any state agency, as the term "state agency" is defined in s.  
 196 ~~216.011~~, who is discharged, disciplined, or subjected to other  
 197 adverse personnel action, or denied employment, because he or  
 198 she engaged in an activity protected by this section may file a  
 199 complaint, ~~which complaint must be made~~ in accordance with s.  
 200 112.31895. Upon receipt of notice from the Florida Commission on  
 201 Human Relations of termination of the investigation, the  
 202 complainant may elect to pursue the administrative remedy  
 203 available under s. 112.31895 or bring a civil action within 180  
 204 days after receipt of the notice.

205 (b) Within 60 days after the action prohibited by this  
 206 section, any local public employee protected by this section may  
 207 file a complaint with the appropriate local governmental  
 208 authority, if that authority has established by ordinance an  
 209 administrative procedure for handling such complaints or has  
 210 contracted with the Division of Administrative Hearings under s.  
 211 120.65 to conduct hearings under this section. The  
 212 administrative procedure created by ordinance must provide for  
 213 the complaint to be heard by a panel of impartial persons  
 214 appointed by the appropriate local governmental authority. Upon  
 215 hearing the complaint, the panel must make findings of fact and  
 216 conclusions of law for a final decision by the local  
 217 governmental authority. Within 180 days after entry of a final  
 218 decision by the local governmental authority, the public  
 219 employee who filed the complaint may bring a civil action in any  
 220 court of competent jurisdiction. If the local governmental



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221 authority has not established an administrative procedure by  
 222 ordinance or contract, a local public employee may, within 180  
 223 days after the action prohibited by this section, bring a civil  
 224 action in a court of competent jurisdiction. For the purpose of  
 225 this paragraph, the term "local governmental authority" includes  
 226 any regional, county, or municipal entity, special district,  
 227 community college district, or school district or any political  
 228 subdivision of any of the foregoing.

229 (c) Any other person protected by this section may, after  
 230 exhausting all available contractual or administrative remedies,  
 231 bring a civil action in any court of competent jurisdiction  
 232 within 180 days after the action prohibited by this section.

233 (9) RELIEF.--In any action brought under this section, the  
 234 relief may ~~must~~ include the following:

235 (a) Reinstatement of the employee to the same position  
 236 held before the adverse action was commenced, or to an  
 237 equivalent position or reasonable front pay as alternative  
 238 relief.

239 (b) Reinstatement of the employee's full fringe benefits  
 240 and seniority rights, as appropriate.

241 (c) Compensation, if appropriate, for lost wages,  
 242 benefits, or other lost remuneration caused by the adverse  
 243 action.

244 (d) Payment of reasonable costs, including attorney's  
 245 fees, to a substantially prevailing employee, or to the  
 246 prevailing employer if the employee filed a frivolous action in  
 247 bad faith.

248 (e) Issuance of an injunction, if appropriate, by a court  
 249 of competent jurisdiction.

250 (f) Temporary reinstatement to the employee's former  
 251 position or to an equivalent position, pending the final outcome  
 252 on the complaint, if an employee complains of being discharged  
 253 in retaliation for a protected disclosure and if a court of  
 254 competent jurisdiction or the Florida Commission on Human  
 255 Relations, as applicable under s. 112.31895, determines that the  
 256 disclosure was not made in bad faith or for a wrongful purpose  
 257 or occurred after an agency's initiation of a personnel action  
 258 against the employee which includes documentation of the  
 259 employee's violation of a disciplinary standard or performance  
 260 deficiency. This paragraph does not apply to an employee of a  
 261 municipality.

262 (10) DEFENSES.--It shall be an affirmative defense to any  
 263 action brought pursuant to this section that:

264 (a) The adverse action was predicated upon grounds other  
 265 than, and would have been taken absent, the employee's or  
 266 person's exercise of rights protected by this section.

267 (b) An employee or person discloses information known or  
 268 reasonably should be known by the employee or person to be  
 269 false.

270 (11) EXISTING RIGHTS.--Sections 112.3187-112.31895 do not  
 271 diminish the rights, privileges, or remedies of an employee  
 272 under any other law or rule or under any collective bargaining  
 273 agreement or employment contract; however, the election of  
 274 remedies in s. 447.401 also applies to whistle-blower actions.

275 Section 2. Section 112.3188, Florida Statutes, is amended  
 276 to read:

277 112.3188 Confidentiality of information given to the Chief  
 278 Inspector General, internal auditors, the Florida Commission on  
 279 Human Relations, inspectors general, local chief executive  
 280 officers, or other appropriate local officials.--

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

286 (a) Has violated or is reasonably suspected of having  
 287 violated any federal, state, or local law, rule, or regulation,  
 288 thereby creating and presenting a substantial and specific  
 289 danger to the public's health, safety, or welfare; or

290 (b) Has committed an act of gross mismanagement, gross  
 291 misconduct ~~malfeasance, misfeasance~~, gross waste of public  
 292 funds, or gross neglect of duty

293  
 294 may not be disclosed to anyone other than a member of the Chief  
 295 Inspector General's, agency inspector general's, internal  
 296 auditor's, the Florida Commission on Human Relations, local  
 297 chief executive officer's, or other appropriate local official's  
 298 staff without the written consent of the individual, unless the  
 299 Chief Inspector General, internal auditor, agency inspector  
 300 general, the Florida Commission on Human Relations, local chief  
 301 executive officer, or other appropriate local official  
 302 determines that: the disclosure of the individual's identity is

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303 necessary to prevent a substantial and specific danger to the  
304 public's health, safety, or welfare or to prevent the imminent  
305 commission of a crime; or the disclosure is unavoidable and  
306 absolutely necessary during the course of the audit, evaluation,  
307 or investigation.

308 (2) (a) Except as specifically authorized by s. 112.3189,  
309 all information received by the Chief Inspector General or an  
310 agency inspector general or information produced or derived from  
311 fact-finding or other investigations conducted by the Florida  
312 Commission on Human Relations or the Department of Law  
313 Enforcement is confidential and exempt from s. 119.07(1) if the  
314 information is being received or derived from allegations as set  
315 forth in paragraph (1) (a) or paragraph (1) (b), and an  
316 investigation is active.

317 (b) All information received by a local chief executive  
318 officer or appropriate local official or information produced or  
319 derived from fact-finding or investigations conducted pursuant  
320 to the administrative procedure established by ordinance by a  
321 local government as authorized by s. 112.3187(8) (b) is  
322 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
323 of the State Constitution, if the information is being received  
324 or derived from allegations as set forth in paragraph (1) (a) or  
325 paragraph (1) (b) and an investigation is active.

326 (c) Information deemed confidential under this section may  
327 be disclosed by the Chief Inspector General, agency inspector  
328 general, local chief executive officer, or other appropriate  
329 local official receiving the information if the recipient  
330 determines that the disclosure of the information is absolutely

331 necessary to prevent a substantial and specific danger to the  
 332 public's health, safety, or welfare or to prevent the imminent  
 333 commission of a crime. Information disclosed under this  
 334 subsection may be disclosed only to persons who are in a  
 335 position to prevent the danger to the public's health, safety,  
 336 or welfare or to prevent the imminent commission of a crime  
 337 based on the disclosed information.

338 1. An investigation is active under this section if:

339 a. It is an ongoing investigation or inquiry or collection  
 340 of information and evidence and is continuing with a reasonable,  
 341 good faith anticipation of resolution in the foreseeable future;  
 342 or

343 b. All or a portion of the matters under investigation or  
 344 inquiry are active criminal intelligence information or active  
 345 criminal investigative information as defined in s. 119.011.

346 2. Notwithstanding sub-subparagraph 1.a., an investigation  
 347 ceases to be active when:

348 a. The written report required under s. 112.3189(9) has  
 349 been sent by the Chief Inspector General to the recipients named  
 350 in s. 112.3189(9);

351 b. It is determined that an investigation is not necessary  
 352 under s. 112.3189(5); or

353 c. A final decision has been rendered by the local  
 354 government or by the Division of Administrative Hearings  
 355 pursuant to s. 112.3187(8)(b).

356 3. Notwithstanding paragraphs (a), (b), and this  
 357 paragraph, information or records received or produced under  
 358 this section which are otherwise confidential under law or

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359 exempt from disclosure under chapter 119 retain their  
360 confidentiality or exemption.

361 4. Any person who willfully and knowingly discloses  
362 information or records made confidential under this subsection  
363 commits a misdemeanor of the first degree, punishable as  
364 provided in s. 775.082 or s. 775.083.

365 Section 3. Section 112.3189, Florida Statutes, is amended  
366 to read:

367 112.3189 Investigative procedures upon receipt of whistle-  
368 blower information from certain state and independent contractor  
369 employees.--

370 (1) This section only applies to the disclosure of  
371 information as described in s. 112.3187 (6) ~~(5)~~ by an employee or  
372 former employee of, or an applicant for employment with, a state  
373 agency, or by an employee or former employee of an independent  
374 contractor with any state agency as the term "state agency" is  
375 defined in s. 216.011, to the Office of the Chief Inspector  
376 General of the Executive Office of the Governor or to the agency  
377 inspector general. If an agency does not have an inspector  
378 general, the head of the state agency, ~~as defined in s. 216.011,~~  
379 shall designate an employee, in consultation with the Chief  
380 Inspector General, to receive information described in s.  
381 112.3187 (6) ~~(5)~~. For purposes of this section and s. 112.3188  
382 only, the employee designated by the head of the state agency  
383 shall be deemed an agency inspector general.

384 (2) To facilitate the receipt of information described in  
385 subsection (1), the Chief Inspector General shall maintain an  
386 in-state toll-free whistle-blower's hotline and shall circulate

387 among the various state agencies an advisory for all employees  
 388 which indicates the existence of the toll-free number and its  
 389 purpose and provides an address to which written whistle-blower  
 390 information may be forwarded.

391 (3) When a person alleges information described in s.  
 392 112.3187(6)~~(5)~~, the Chief Inspector General or agency inspector  
 393 general actually receiving such information shall within 20 days  
 394 of receiving such information determine:

395 (a) Whether the information disclosed is the type of  
 396 information described in s. 112.3187(6)~~(5)~~.

397 (b) Whether the source of the information is a person who  
 398 is an employee or former employee of, or an applicant for  
 399 employment with, a state agency or an employee or former  
 400 employee of an independent contractor with any state agency, ~~as~~  
 401 ~~defined in s. 216.011.~~

402 (c) Whether the information actually disclosed  
 403 demonstrates reasonable cause to suspect that an employee or  
 404 agent of an agency or independent contractor has violated any  
 405 federal, state, or local law, rule, or regulation, thereby  
 406 creating and presenting a substantial and specific danger to the  
 407 public's health, safety, or welfare, or has committed an act of  
 408 gross mismanagement, gross misconduct ~~malfeasance, misfeasance,~~  
 409 gross waste of public funds, or gross neglect of duty.

410 (4) If the Chief Inspector General or agency inspector  
 411 general under subsection (3) determines that the information  
 412 disclosed is not the type of information described in s.  
 413 112.3187(6)~~(5)~~, or that the source of the information is not a  
 414 person who is an employee or former employee of, or an applicant

415 for employment with, a state agency, or an employee or former  
 416 employee of an independent contractor with any state agency ~~as~~  
 417 ~~defined in s. 216.011~~, or that the information disclosed does  
 418 not demonstrate reasonable cause to suspect that an employee or  
 419 agent of an agency or independent contractor has violated any  
 420 federal, state, or local law, rule, or regulation, thereby  
 421 creating and presenting a substantial and specific danger to the  
 422 public's health, safety, or welfare, or has committed an act of  
 423 gross mismanagement, gross misconduct ~~malfeasance, misfeasance,~~  
 424 gross waste of public funds, or gross neglect of duty, the Chief  
 425 Inspector General or agency inspector general shall notify the  
 426 complainant of such fact and copy and return, upon request of  
 427 the complainant, any documents and other materials that were  
 428 provided by the complainant.

429 (5) (a) If the Chief Inspector General or agency inspector  
 430 general under subsection (3) determines that the information  
 431 disclosed is the type of information described in s.  
 432 112.3187(6) ~~(5)~~, that the source of the information is from a  
 433 person who is an employee or former employee of, or an applicant  
 434 for employment with, a state agency, or an employee or former  
 435 employee of an independent contractor with any state agency ~~as~~  
 436 ~~defined in s. 216.011~~, and that the information 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 a substantial and specific danger to the public's  
 441 health, safety, or welfare, or has committed an act of gross  
 442 mismanagement, gross misconduct ~~malfeasance, misfeasance,~~ gross



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443 waste of public funds, or gross neglect of duty, the Chief  
444 Inspector General or agency inspector general making such  
445 determination shall then conduct an investigation, unless the  
446 Chief Inspector General or the agency inspector general  
447 determines, within 30 days after receiving the allegations from  
448 the complainant, that such investigation is unnecessary. For  
449 purposes of this subsection, the Chief Inspector General or the  
450 agency inspector general shall consider the following factors,  
451 but is not limited to only the following factors, when deciding  
452 whether the investigation is not necessary:

453 1. The gravity of the disclosed information compared to  
454 the time and expense of an investigation.

455 2. The potential for an investigation to yield  
456 recommendations that will make state government more efficient  
457 and effective.

458 3. The benefit to state government to have a final report  
459 on the disclosed information.

460 4. Whether the alleged whistle-blower information  
461 primarily concerns personnel practices that may be investigated  
462 under chapter 110.

463 5. Whether another agency may be conducting an  
464 investigation and whether any investigation under this section  
465 could be duplicative.

466 6. The time that has elapsed between the alleged event and  
467 the disclosure of the information.

468 (b) If the Chief Inspector General or agency inspector  
469 general determines under paragraph (a) that an investigation is

470 not necessary, the Chief Inspector General or agency inspector  
 471 general making such determination shall:

472 1. Copy and return, upon request of the complainant, any  
 473 documents and other materials provided by the individual who  
 474 made the disclosure.

475 2. Inform in writing the head of the state agency for the  
 476 agency inspector general making the determination that the  
 477 investigation is not necessary and the individual who made the  
 478 disclosure of the specific reasons why an investigation is not  
 479 necessary and why the disclosure will not be further acted on  
 480 under this section.

481 (6) The agency inspector general may conduct an  
 482 investigation pursuant to paragraph (5)(a) only if the person  
 483 transmitting information to the agency inspector general is an  
 484 employee or former employee of, or an applicant for employment  
 485 with, the agency inspector general's agency or is an employee or  
 486 former employee of the agency's independent contractor. The  
 487 agency inspector general shall:

488 (a) Conduct an investigation with respect to the  
 489 information and any related matters.

490 (b) Submit to the complainant and the Chief Inspector  
 491 General, within 60 days after the date on which a determination  
 492 to conduct an investigation is made under paragraph (5)(a), a  
 493 final written report that sets forth the agency inspector  
 494 general's findings, conclusions, and recommendations, except as  
 495 provided under subsection (11). The complainant shall be advised  
 496 in writing by the agency inspector general ~~head~~ that the  
 497 complainant may submit to the Chief Inspector General and agency

498 inspector general comments on the final report within 10 ~~20~~ days  
 499 after ~~of~~ the date of the report and that such comments will be  
 500 attached to the final report.

501 (7) If the Chief Inspector General decides an  
 502 investigation should be conducted pursuant to paragraph (5)(a),  
 503 the Chief Inspector General shall either:

504 (a) Promptly transmit to the appropriate ~~head of the state~~  
 505 agency inspector general the information with respect to which  
 506 the determination to conduct an investigation was made, and such  
 507 agency inspector general ~~head~~ shall conduct an investigation and  
 508 submit to the Chief Inspector General a final written report  
 509 that sets forth the agency inspector general's ~~head's~~ findings,  
 510 conclusions, and recommendations; or

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

513 2. Submit to the complainant within 60 days after the date  
 514 on which a determination to conduct an investigation is made  
 515 under paragraph (5)(a), a final written report that sets forth  
 516 the Chief Inspector General's findings, conclusions, and  
 517 recommendations, except as provided under subsection (11). The  
 518 complainant shall be advised in writing by the Chief Inspector  
 519 General that the complainant may submit to the Chief Inspector  
 520 General comments on the final report within 10 ~~20~~ days after ~~of~~  
 521 the date of the report and that such comments will be attached  
 522 to the final report.

523 (c) The Chief Inspector General may require an agency  
 524 inspector general or the employee designated as agency inspector  
 525 general under subsection (1) ~~head~~ to conduct an investigation

526 under paragraph (a) only if the information was transmitted to  
527 the Chief Inspector General by:

528 1. An employee or former employee of, or an applicant for  
529 employment with, the agency, or an employee or former employee  
530 of the agency's independent contractor that the information  
531 concerns; or

532 2. An employee who obtained the information in connection  
533 with the performance of the employee's duties and  
534 responsibilities.

535 (8) Final reports required under this section must be  
536 reviewed and signed by the person responsible for conducting the  
537 investigation (agency inspector general, employee designated as  
538 agency inspector general under subsection (1) ~~agency head~~, or  
539 Chief Inspector General) and must include:

540 (a) A summary of the information with respect to which the  
541 investigation was initiated.

542 (b) A description of the conduct of the investigation.

543 (c) A summary of any evidence obtained from the  
544 investigation.

545 (d) A listing of any violation or apparent violation of  
546 any law, rule, or regulation.

547 (e) A description of any action taken or planned as a  
548 result of the investigation, such as:

549 1. A change in an agency rule, regulation, or practice.

550 2. The restoration of an aggrieved employee.

551 3. A disciplinary action against an employee.

552 4. The referral to the Department of Law Enforcement of  
553 any evidence of a criminal violation.

554 (9) (a) A report required of the agency inspector general  
 555 ~~head~~ under paragraph (7) (a) shall be submitted to the Chief  
 556 Inspector General and the complainant within 60 days after the  
 557 agency inspector general ~~head~~ receives the complaint from the  
 558 Chief Inspector General, except as provided under subsection  
 559 (11). The complainant shall be advised in writing by the agency  
 560 inspector general ~~head~~ that the complainant may submit to the  
 561 Chief Inspector General comments on the report within 10 ~~20~~ days  
 562 after ~~of~~ the date of the report and that such comments will be  
 563 attached to the final report.

564 (b) Upon receiving a final report required under this  
 565 section, the Chief Inspector General shall review the report and  
 566 determine whether the report contains the information required  
 567 by subsection (8). If the report does not contain the  
 568 information required by subsection (8), the Chief Inspector  
 569 General shall determine why and note the reasons on an addendum  
 570 to the final report.

571 (c) The Chief Inspector General shall transmit any final  
 572 report under this section, any comments provided by the  
 573 complainant, and any appropriate comments or recommendations by  
 574 the Chief Inspector General to the Governor, to the ~~Joint~~  
 575 Legislative Auditing Committee, to the investigating agency, and  
 576 to the Chief Financial Officer.

577 (d) If the Chief Inspector General does not receive the  
 578 report of the agency inspector general ~~head~~ within the time  
 579 prescribed in paragraph (a), the Chief Inspector General may  
 580 conduct the investigation in accordance with paragraph (7) (b) or  
 581 request that another agency inspector general conduct the

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582 investigation in accordance with subsection (6) and shall report  
583 the complaint to the Governor, to the ~~Joint~~ Legislative Auditing  
584 Committee, and to the investigating agency, together with a  
585 statement noting the failure of the agency inspector general  
586 ~~head~~ to file the required report.

587 (10) For any time period set forth in subsections (3),  
588 (6), (7), and (9), such time period may be extended in writing  
589 by the Chief Inspector General for good cause shown.

590 (11) If an investigation under this section produces  
591 evidence of a criminal violation, the report shall not be  
592 transmitted to the complainant, and the agency head or agency  
593 inspector general shall notify the Chief Inspector General and  
594 the Department of Law Enforcement.

595 Section 4. Section 112.31895, Florida Statutes, is amended  
596 to read:

597 112.31895 Investigative procedures in response to  
598 prohibited personnel actions.--

599 (1)(a) If a disclosure under s. 112.3187 includes or  
600 results in alleged retaliation by an employer, the employee or  
601 former employee of, or applicant for employment with, a state  
602 agency, or the employee or former employee of an independent  
603 contractor with any state agency ~~as defined in s. 216.011~~, that  
604 is so affected may file a complaint alleging a prohibited  
605 personnel action, which complaint must be made by filing a  
606 written and signed complaint with the Office of the Chief  
607 Inspector General in the Executive Office of the Governor or the  
608 Florida Commission on Human Relations, no later than 60 days  
609 after the prohibited personnel action.

610 (b) Within three working days after receiving a complaint  
 611 under this section, the office or officer receiving the  
 612 complaint shall acknowledge receipt of the complaint and provide  
 613 copies of the complaint and any other preliminary information  
 614 available concerning the disclosure of information under s.  
 615 112.3187 to each of the other parties named in paragraph (a),  
 616 which parties shall each acknowledge receipt of such copies to  
 617 the complainant.

618 (2) FACT FINDING.--The Florida Commission on Human  
 619 Relations shall:

620 (a) Receive any allegation of a personnel action  
 621 prohibited by s. 112.3187, including a proposed or potential  
 622 action, and conduct informal fact finding regarding any  
 623 allegation under this section, to the extent necessary to  
 624 determine whether there are reasonable grounds to believe that a  
 625 prohibited personnel action under s. 112.3187 has occurred, is  
 626 occurring, or is to be taken.

627 (b) Notify the complainant, within 15 days after receiving  
 628 a complaint, that the complaint has been received by the  
 629 commission ~~department~~.

630 (c) Within 90 days after receiving the complaint, provide  
 631 the agency head, agency inspector general, or, if applicable,  
 632 the independent contractor, and the complainant with a fact-  
 633 finding report that may include recommendations to the parties  
 634 or proposed resolution of the complaint. The fact-finding report  
 635 shall be presumed admissible in any subsequent or related  
 636 administrative or judicial review.

637 (3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.--

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

641 1. Receive and investigate complaints from employees  
642 alleging retaliation by state agencies or from employees of  
643 independent contractors with any state agency, ~~as the term~~  
644 ~~"state agency" is defined in s. 216.011.~~

645 2. Protect employees and applicants for employment with  
646 such state agencies or employees of such independent contractors  
647 from prohibited personnel practices under s. 112.3187.

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

650 4. Recommend disciplinary proceedings pursuant to  
651 investigation and appropriate agency rules and procedures.

652 5. Coordinate with the Chief Inspector General in the  
653 Executive Office of the Governor and the Florida Commission on  
654 Human Relations to receive, review, and forward to appropriate  
655 agencies, legislative entities, or the Department of Law  
656 Enforcement disclosures of a violation of any law, rule, or  
657 regulation, or disclosures of gross mismanagement, gross  
658 misconduct ~~malfeasance, misfeasance, nonfeasance~~, neglect of  
659 duty, or gross waste of public funds.

660 6. Review rules pertaining to personnel matters issued or  
661 proposed by the Department of Management Services, the Public  
662 Employees Relations Commission, and other agencies, and, if the  
663 Florida Commission on Human Relations finds that any rule or  
664 proposed rule, on its face or as implemented, requires the



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665 commission of a prohibited personnel practice, provide a written  
666 comment to the appropriate agency.

667 7. Investigate, request assistance from other governmental  
668 entities, and, if appropriate, bring actions concerning,  
669 allegations of retaliation by state agencies or independent  
670 contractors of state agencies under subparagraph 1.

671 8. Administer oaths, examine witnesses, take statements,  
672 issue subpoenas, order the taking of depositions, order  
673 responses to written interrogatories, and make appropriate  
674 motions to limit discovery, pursuant to investigations under  
675 subparagraph 1.

676 9. Intervene or otherwise participate, as a matter of  
677 right, in any appeal or other proceeding arising under this  
678 section before the Public Employees Relations Commission or any  
679 other appropriate agency, except that the Florida Commission on  
680 Human Relations must comply with the rules of the commission or  
681 other agency and may not seek corrective action or intervene in  
682 an appeal or other proceeding without the consent of the person  
683 protected under ss. 112.3187-112.31895.

684 10. Conduct an investigation, in the absence of an  
685 allegation, to determine whether reasonable grounds exist to  
686 believe that a prohibited action or a pattern of prohibited  
687 action has occurred, is occurring, or is to be taken.

688 (b) Within 15 days after receiving a complaint that a  
689 person has been discharged from employment allegedly for  
690 disclosing protected information under s. 112.3187, the Florida  
691 Commission on Human Relations shall review the information and  
692 determine whether temporary reinstatement is appropriate under

693 s. 112.3187(9)(f). If the Florida Commission on Human Relations  
694 so determines, it shall apply for an expedited order from the  
695 appropriate agency or circuit court for the immediate  
696 reinstatement of the employee who has been discharged subsequent  
697 to the disclosure made under s. 112.3187, pending the issuance  
698 of the final order on the complaint.

699 (c) The Florida Commission on Human Relations shall notify  
700 a complainant of the status of the investigation and any action  
701 taken at such times as the commission considers appropriate.

702 (d) If the Florida Commission on Human Relations is unable  
703 to conciliate a complaint within 60 days after receipt of the  
704 fact-finding report, the Florida Commission on Human Relations  
705 shall terminate the investigation. Upon termination of any  
706 investigation, the Florida Commission on Human Relations shall  
707 notify the complainant and the agency head, agency inspector  
708 general, and, if applicable, the independent contractor of the  
709 termination of the investigation, providing a summary of  
710 relevant facts found during the investigation and the reasons  
711 for terminating the investigation. A written statement under  
712 this paragraph is presumed admissible as evidence in any  
713 judicial or administrative proceeding but is not admissible  
714 without the consent of the complainant.

715 (e)1. The Florida Commission on Human Relations may  
716 request an agency, independent contractor, or circuit court to  
717 order a stay, on such terms as the court requires, of any  
718 personnel action for 45 days if the Florida Commission on Human  
719 Relations determines that reasonable grounds exist to believe  
720 that a prohibited personnel action has occurred, is occurring,

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721 or is to be taken. The Florida Commission on Human Relations may  
722 request that such stay be extended for appropriate periods of  
723 time.

724 2. If, in connection with any investigation, the Florida  
725 Commission on Human Relations determines that reasonable grounds  
726 exist to believe that a prohibited action has occurred, is  
727 occurring, or is to be taken which requires corrective action,  
728 the Florida Commission on Human Relations shall report the  
729 determination together with any findings or recommendations to  
730 the agency head, agency inspector general, and, if applicable,  
731 the independent contractor and may report that determination and  
732 those findings and recommendations to the Governor and the Chief  
733 Financial Officer. The Florida Commission on Human Relations may  
734 include in the report recommendations for corrective action to  
735 be taken.

736 3. If, after 20 days, the agency does not implement the  
737 recommended action, the Florida Commission on Human Relations  
738 shall terminate the investigation and notify the complainant of  
739 the right to appeal under subsection (4), or may petition the  
740 agency or independent contractor for corrective action under  
741 this subsection.

742 4. If the Florida Commission on Human Relations finds, in  
743 consultation with the individual subject to the prohibited  
744 action, that the agency or independent contractor has  
745 implemented the corrective action, the commission shall file  
746 such finding with the agency head, agency inspector general,  
747 and, if applicable, independent contractor, together with any

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748 written comments that the individual provides, and terminate the  
749 investigation.

750 (f) If the Florida Commission on Human Relations finds  
751 that there are no reasonable grounds to believe that a  
752 prohibited personnel action has occurred, is occurring, or is to  
753 be taken, the commission shall terminate the investigation.

754 (g)1. If, in connection with any investigation under this  
755 section, it is determined that reasonable grounds exist to  
756 believe that a criminal violation has occurred which has not  
757 been previously reported, the Florida Commission on Human  
758 Relations shall report this determination to the Department of  
759 Law Enforcement and to the state attorney having jurisdiction  
760 over the matter.

761 2. If an alleged criminal violation has been reported, the  
762 Florida Commission on Human Relations shall confer with the  
763 Department of Law Enforcement and the state attorney before  
764 proceeding with the investigation of the prohibited personnel  
765 action and may defer the investigation pending completion of the  
766 criminal investigation and proceedings. The Florida Commission  
767 on Human Relations shall inform the complainant of the decision  
768 to defer the investigation and, if appropriate, of the  
769 confidentiality of the investigation.

770 (h) If, in connection with any investigation under this  
771 section, the Florida Commission on Human Relations determines  
772 that reasonable grounds exist to believe that a violation of a  
773 law, rule, or regulation has occurred, other than a criminal  
774 violation or a prohibited action under this section, the  
775 commission may report such violation to the head of the agency,

776 agency inspector general, and, if applicable, the independent  
777 contractor involved. Within 30 days after the agency receives  
778 the report, the agency head, agency inspector general, and, if  
779 applicable, the independent contractor head shall provide to the  
780 commission a certification that states that the ~~head of the~~  
781 agency or independent contractor has personally reviewed the  
782 report and indicates what action has been or is to be taken and  
783 when the action will be completed.

784 (i) During any investigation under this section,  
785 disciplinary action may not be taken against any employee of a  
786 state agency, or employee of an independent contractor of a  
787 state agency ~~as the term "state agency" is defined in s.~~  
788 ~~216.011~~, for reporting an alleged prohibited personnel action  
789 that is under investigation, or for reporting any related  
790 activity, or against any employee for participating in an  
791 investigation without notifying the Florida Commission on Human  
792 Relations.

793 (j) The Florida Commission on Human Relations may also  
794 petition for an award of reasonable attorney's fees and expenses  
795 from a state agency, or from an independent contractor of a  
796 state agency ~~as the term "state agency" is defined in s.~~  
797 ~~216.011~~, pursuant to s. 112.3187(9).

798 (4) RIGHT TO APPEAL.--

799 (a) Not more than 60 days after receipt of a notice of  
800 termination of the investigation from the Florida Commission on  
801 Human Relations, the complainant may file, with the Public  
802 Employees Relations Commission, a complaint against the  
803 employer-agency regarding the alleged prohibited personnel

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804 action. The Public Employees Relations Commission shall have  
805 jurisdiction over such complaints under ss. 112.3187 and  
806 447.503(4) and (5).

807 (b) Judicial review of any final order of the commission  
808 shall be as provided in s. 120.68.

809 Section 5. Paragraph (b) of subsection (5) of section  
810 20.055, Florida Statutes, is amended to read:

811 20.055 Agency inspectors general.--

812 (5) In carrying out the auditing duties and  
813 responsibilities of this act, each inspector general shall  
814 review and evaluate internal controls necessary to ensure the  
815 fiscal accountability of the state agency. The inspector general  
816 shall conduct financial, compliance, electronic data processing,  
817 and performance audits of the agency and prepare audit reports  
818 of his or her findings. The scope and assignment of the audits  
819 shall be determined by the inspector general; however, the  
820 agency head may at any time direct the inspector general to  
821 perform an audit of a special program, function, or  
822 organizational unit. The performance of the audit shall be under  
823 the direction of the inspector general, except that if the  
824 inspector general does not possess the qualifications specified  
825 in subsection (4), the director of auditing shall perform the  
826 functions listed in this subsection.

827 (b) Audit workpapers and reports shall be public records  
828 to the extent that they do not include information which has  
829 been made confidential and exempt from the provisions of s.  
830 119.07(1) pursuant to law. However, when the inspector general  
831 or a member of the staff receives from an individual a complaint

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832 or information that falls within the definition provided in s.  
833 112.3187(6)~~(5)~~, the name or identity of the individual shall not  
834 be disclosed to anyone else without the written consent of the  
835 individual, unless the inspector general determines that such  
836 disclosure is unavoidable during the course of the audit or  
837 investigation.

838 Section 6. This act shall take effect July 1, 2006.