

By Senator Brandes

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1 A bill to be entitled
2 An act relating to the Whistleblower's Act; amending
3 ss. 14.32 and 20.055, F.S.; conforming provisions to
4 changes made by the act; amending s. 112.3187, F.S.;
5 revising a short title; revising legislative intent;
6 revising, reordering, and providing definitions;
7 revising the actions that an agency or independent
8 contractor is prohibited from taking against an
9 employee who participates in protected activity or
10 discloses certain information; providing
11 nonapplicability of whistleblower remedies and
12 protections to certain persons; revising requirements
13 related to the disclosure of information and methods
14 of reporting the information; revising requirements
15 related to remedies; revising affirmative defenses;
16 amending s. 112.3188, F.S.; conforming cross-
17 references to changes made by the act; amending s.
18 112.3189, F.S.; revising applicability of provisions
19 relating to investigative procedures upon receipt of
20 whistleblower information; revising powers and
21 responsibilities of the Chief Inspector General and
22 agency inspectors general; revising reporting
23 requirements; reordering and amending s. 112.31895,
24 F.S.; revising investigative procedures relating to
25 prohibited personnel actions; revising complaint
26 requirements; revising fact-finding responsibilities
27 of the Florida Commission on Human Relations; revising
28 commission powers and responsibilities; providing
29 requirements for the termination of an investigation;
30 amending ss. 112.31901 and 760.06, F.S.; conforming
31 provisions to changes made by the act; providing an
32 effective date.

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

Section 1. Paragraph (f) of subsection (2) of section 14.32, Florida Statutes, is amended to read:

14.32 Office of Chief Inspector General.—

(2) The Chief Inspector General shall:

(f) Coordinate the activities of the Florida Public Whistleblower's ~~Whistle-blower's~~ Act pursuant to chapter 112 and maintain the whistleblower's ~~whistle-blower's~~ hotline to receive complaints and information concerning the possible violation of law or administrative rules, mismanagement, fraud, waste, abuse of authority, malfeasance, or a substantial or specific danger to the health, welfare, or safety of the public.

Section 2. Paragraphs (a), (b), and (f) of subsection (7) of section 20.055, Florida Statutes, are amended to read:

20.055 Agency inspectors general.—

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

(a) Receive complaints and coordinate all activities of the agency as required by the Florida Public Whistleblower's ~~Whistle-blower's~~ Act pursuant to ss. 112.3187-112.31895.

(b) Receive and consider the complaints which do not meet the criteria for an investigation under the Florida Public

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62 Whistleblower's ~~Whistle-blower's~~ Act and conduct, supervise, or
 63 coordinate such inquiries, investigations, or reviews as the
 64 inspector general deems appropriate.

65 (f) Submit in a timely fashion final reports on
 66 investigations conducted by the inspector general to the agency
 67 head, except for whistleblower's ~~whistle-blower's~~
 68 investigations, which shall be conducted and reported pursuant
 69 to s. 112.3189.

70 Section 3. Section 112.3187, Florida Statutes, is amended
 71 to read:

72 112.3187 Adverse action against employee for disclosing
 73 information of specified nature prohibited; employee remedy and
 74 relief.—

75 (1) SHORT TITLE.—Sections 112.3187-112.31895 may be cited
 76 as the "Florida Public Whistleblower's ~~Whistle-blower's~~ Act."

77 (2) LEGISLATIVE INTENT.—It is the intent of the Legislature
 78 to prevent agencies or independent contractors from taking
 79 retaliatory action against an employee who reports to an
 80 appropriate agency or supervisory official violations of law on
 81 the part of a public employer or independent contractor that
 82 create a substantial and specific danger to the public's health,
 83 safety, or welfare. It is further the intent of the Legislature
 84 to prevent agencies or independent contractors from taking
 85 retaliatory action against any person who discloses information
 86 to an appropriate agency or supervisory official alleging acts
 87 of gross mismanagement, malfeasance, misfeasance, gross
 88 misconduct ~~improper use of governmental office~~, gross waste of
 89 public funds, Medicaid fraud or abuse, ~~or any other abuse~~ or
 90 gross neglect of duty on the part of an agency, public officer,

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91 or employee.

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

95 (a) "Agency" means any state, regional, county, local, or
96 municipal government entity, whether executive, judicial, or
97 legislative; any official, officer, department, division,
98 bureau, commission, authority, or political subdivision therein;
99 or any public school, community college, or state university.

100 (b) "Employee" means a person who performs services for,
101 and under the control and direction of, or contracts with, an
102 agency or independent contractor for wages or other
103 remuneration. The term includes a current or former employee or
104 an applicant for employment.

105 (i)(e) "Retaliatory Adverse personnel action" means the
106 discharge, suspension, transfer, or demotion of an any employee
107 or the withholding of bonuses, the reduction in salary or
108 benefits, or any other adverse action taken against an employee
109 ~~within the terms and conditions of employment~~ by an agency or
110 independent contractor that may dissuade a reasonable employee
111 from reporting or disclosing any activity described in
112 subparagraphs (h)1. and 2.

113 (c) "Gross misconduct" means a willful transgression of law
114 or established rule that is of such a degree or recurrence as to
115 show a substantial disregard of the employer's interests or the
116 employee's duties and obligations to the public.

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

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120 (d)~~(e)~~ "Gross mismanagement" means a continuous pattern of
121 managerial abuses, wrongful or arbitrary and capricious actions,
122 or fraudulent or criminal conduct which may have a substantial
123 adverse economic impact.

124 (f) "Malfeasance" means engaging in misconduct or
125 wrongdoing with a disregard of the employer's interests or the
126 employee's duties and obligations to the public.

127 (g) "Misfeasance" means the performance of a lawful act in
128 an improper or illegal manner.

129 (h) "Protected activity" means:

130 1. The reporting to an appropriate agency or supervisory
131 official of violations of law on the part of a public employer
132 or independent contractor which create a substantial and
133 specific danger to the public's health, safety, or welfare.

134 2. The disclosure of information to an appropriate agency
135 or supervisory official alleging acts of gross mismanagement,
136 malfeasance, misfeasance, gross misconduct, gross waste of
137 public funds, Medicaid fraud or abuse, or gross neglect of duty
138 on the part of an agency, public officer, or employee.

139 3. Participation in an investigation, hearing, or other
140 inquiry pursuant to this section by an agency or federal
141 government entity.

142 4. Refusal to participate in any retaliatory action
143 prohibited by this section.

144 (j) "State agency" means any official, officer, commission,
145 board, authority, council, committee, or department of the
146 executive branch of state government.

147 (4) ACTIONS PROHIBITED.—

148 (a) An agency or independent contractor shall not dismiss,

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149 discipline, or take any other retaliatory ~~adverse personnel~~
 150 action against an employee for participating in protected
 151 activity or for disclosing information pursuant to subsection
 152 (6) the provisions of this section.

153 ~~(b) An agency or independent contractor shall not take any~~
 154 ~~adverse action that affects the rights or interests of a person~~
 155 ~~in retaliation for the person's disclosure of information under~~
 156 ~~this section.~~

157 ~~(e)~~ The provisions of this subsection shall not be
 158 applicable when an employee or person discloses information
 159 known, or which reasonably should be known, by the employee or
 160 person to be false.

161 (c) A remedy or protection under ss. 112.3187-112.31895
 162 does not apply to:

163 1. A person who has committed, or intentionally
 164 participated in committing, a violation or suspected violation
 165 for which protection under ss. 112.3187-112.31895 is being
 166 sought.

167 2. A person while he or she is under the care, custody, or
 168 control of the state correctional system, or after release from
 169 the care, custody, or control of the state correctional system,
 170 with respect to circumstances that occurred during any period of
 171 incarceration.

172 (5) NATURE OF INFORMATION DISCLOSED.—

173 (a) The information disclosed by employees and persons
 174 under this section must include:

175 1. (a) Any violation or suspected violation of any federal,
 176 state, or local law, rule, or regulation committed by an
 177 employee or agent of an agency or independent contractor which

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178 creates and presents a substantial and specific danger to the
179 public's health, safety, or welfare; or-

180 2.-(b) Any act or reasonably suspected act of gross
181 mismanagement, malfeasance, misfeasance, gross misconduct, gross
182 waste of public funds, suspected or actual Medicaid fraud or
183 abuse, or gross neglect of duty committed by an employee or
184 agent of an agency or independent contractor.

185 (b) Information disclosed by an employee or former employee
186 of an independent contractor must relate to provisions of the
187 contract between the agency and the independent contractor.

188 (6) TO WHOM INFORMATION DISCLOSED AND METHODS OF
189 REPORTING.-

190 (a) Information disclosed under this section alleging an
191 action on the part of a public employer or independent
192 contractor that creates a substantial and specific danger to the
193 public's health, safety, or welfare, or alleging gross waste of
194 funds or any other abuse or gross neglect of duty on the part of
195 an agency, public officer, or employee, shall be disclosed to
196 the chief inspector general, agency inspector general or
197 employee designated as agency inspector general under s.
198 112.3189(1), inspectors general under s. 20.055, or the Florida
199 Commission on Human Relations.

200 (b) The information disclosed by an employee or person
201 pursuant to this subsection or subsection (5) must be submitted
202 in a written and signed complaint to one of the following:

203 1. The employee's supervisory official, the Chief Inspector
204 General as defined in s. 14.32(1), the agency inspector general,
205 the employee designated as agency inspector general under s.
206 112.3189(1), inspectors general under s. 20.055, or to the

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207 Florida Commission on Human Relations. Employees and independent
208 contractors of the Chief Inspector General, the employee
209 designated as an agency inspector general, or the Florida
210 Commission on Human Relations must meet the same requirements as
211 others affected by this section; or

212 2. An agency or federal government entity that has
213 authority to investigate, police, manage, or otherwise remedy
214 the violation or act.

215 (c) If a disclosure is related to a local governmental
216 entity, including any regional, county, or municipal entity,
217 special district, community college district, or school district
218 or any political subdivision of any of the foregoing, the
219 information must be disclosed to a chief executive officer, as
220 defined in s. 447.203(9), or other appropriate local official.

221 (d) Information disclosed to any other person or entity
222 does not qualify for protection under this section ~~The~~
223 ~~information disclosed under this section must be disclosed to~~
224 ~~any agency or federal government entity having the authority to~~
225 ~~investigate, police, manage, or otherwise remedy the violation~~
226 ~~or act, including, but not limited to, the Office of the Chief~~
227 ~~Inspector General, an agency inspector general or the employee~~
228 ~~designated as agency inspector general under s. 112.3189(1) or~~
229 ~~inspectors general under s. 20.055, the Florida Commission on~~
230 ~~Human Relations, and the whistle-blower's hotline created under~~
231 ~~s. 112.3189. However, for disclosures concerning a local~~
232 ~~governmental entity, including any regional, county, or~~
233 ~~municipal entity, special district, community college district,~~
234 ~~or school district or any political subdivision of any of the~~
235 ~~foregoing, the information must be disclosed to a chief~~

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236 ~~executive officer as defined in s. 447.203(9) or other~~
237 ~~appropriate local official.~~

238 ~~(7) EMPLOYEES AND PERSONS PROTECTED.—This section protects~~
239 ~~employees and persons who disclose information on their own~~
240 ~~initiative in a written and signed complaint; who are requested~~
241 ~~to participate in an investigation, hearing, or other inquiry~~
242 ~~conducted by any agency or federal government entity; who refuse~~
243 ~~to participate in any adverse action prohibited by this section;~~
244 ~~or who initiate a complaint through the whistle-blower's hotline~~
245 ~~or the hotline of the Medicaid Fraud Control Unit of the~~
246 ~~Department of Legal Affairs; or employees who file any written~~
247 ~~complaint to their supervisory officials or employees who submit~~
248 ~~a complaint to the Chief Inspector General in the Executive~~
249 ~~Office of the Governor, to the employee designated as agency~~
250 ~~inspector general under s. 112.3189(1), or to the Florida~~
251 ~~Commission on Human Relations. The provisions of this section~~
252 ~~may not be used by a person while he or she is under the care,~~
253 ~~custody, or control of the state correctional system or, after~~
254 ~~release from the care, custody, or control of the state~~
255 ~~correctional system, with respect to circumstances that occurred~~
256 ~~during any period of incarceration. No remedy or other~~
257 ~~protection under ss. 112.3187-112.31895 applies to any person~~
258 ~~who has committed or intentionally participated in committing~~
259 ~~the violation or suspected violation for which protection under~~
260 ~~ss. 112.3187-112.31895 is being sought.~~

261 ~~(7)(8) REMEDIES.—~~

262 (a) Any employee of or applicant for employment with any
263 state agency or an independent contractor of a state agency, as
264 the term "state agency" is defined in s. 112.3187(3) ~~216.011~~,

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265 who is discharged, disciplined, or subjected to other reta
266 ~~adverse personnel~~ action, or denied employment, because he or
267 she engaged in an activity protected by this section may file a
268 complaint with, ~~which complaint must be made in accordance with~~
269 ~~s. 112.31895. Upon receipt of notice from~~ the Florida Commission
270 on Human Relations. The complaint must be made in accordance
271 with s. 112.31895 ~~of termination of the investigation, the~~
272 ~~complainant may elect to pursue the administrative remedy~~
273 ~~available under s. 112.31895 or bring a civil action within 180~~
274 ~~days after receipt of the notice.~~

275 (b) Within 60 days after the action prohibited by this
276 section, any local public employee protected by this section may
277 file a complaint with the appropriate local governmental
278 authority, if that authority has established by ordinance an
279 administrative procedure for handling such complaints or has
280 contracted with the Division of Administrative Hearings under s.
281 120.65 to conduct hearings under this section. The
282 administrative procedure created by ordinance must provide for
283 the complaint to be heard by a panel of impartial persons
284 appointed by the appropriate local governmental authority. Upon
285 hearing the complaint, the panel must make findings of fact and
286 conclusions of law for a final decision by the local
287 governmental authority. Within 180 days after entry of a final
288 decision by the local governmental authority, the public
289 employee who filed the complaint may bring a civil action in any
290 court of competent jurisdiction. If the local governmental
291 authority has not established an administrative procedure by
292 ordinance or contract, a local public employee may, within 180
293 days after the action prohibited by this section, bring a civil

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294 action in a court of competent jurisdiction. For the purpose of
295 this paragraph, the term "local governmental authority" includes
296 any regional, county, or municipal entity, special district,
297 community college district, or school district or any political
298 subdivision of any of the foregoing.

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

303 ~~(8)-(9)~~ RELIEF.—In any action brought under this section,
304 the relief must include the following:

305 (a) Reinstatement of the employee to the same position held
306 before the retaliatory ~~adverse~~ action was commenced, or to an
307 equivalent position or reasonable front pay as alternative
308 relief.

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

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

313 (d) Payment of reasonable costs, including attorney
314 ~~attorney's~~ fees, to a substantially prevailing employee, or to
315 the prevailing employer if the employee filed a frivolous action
316 in bad faith.

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

319 (f) Temporary reinstatement to the employee's former
320 position or to an equivalent position, pending the final outcome
321 on the complaint, if an employee complains of being discharged
322 in retaliation for a protected disclosure and if a court of

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323 competent jurisdiction or the Florida Commission on Human
 324 Relations, as applicable under s. 112.31895, determines that the
 325 disclosure was not made in bad faith or for a wrongful purpose
 326 or occurred after an agency's initiation of a personnel action
 327 against the employee which includes documentation of the
 328 employee's violation of a disciplinary standard or performance
 329 deficiency. This paragraph does not apply to an employee of a
 330 municipality.

331 (9)~~(10)~~ AFFIRMATIVE DEFENSES.—It shall be an affirmative
 332 defense to any action brought pursuant to this section that:

333 (a) The retaliatory ~~adverse~~ action was predicated upon
 334 grounds other than, and would have been taken absent, the
 335 employee's or person's exercise of rights protected by this
 336 section; or

337 (b) The employee or person disclosed information that was
 338 known, or reasonably should have been known, to be false.

339 (10)~~(11)~~ EXISTING RIGHTS.—Sections 112.3187-112.31895 do
 340 not diminish the rights, privileges, or remedies of an employee
 341 under any other law or rule or under any collective bargaining
 342 agreement or employment contract; however, the election of
 343 remedies in s. 447.401 also applies to whistleblower ~~whistle-~~
 344 ~~blower~~ actions.

345 Section 4. Paragraphs (b) and (c) of subsection (2) of
 346 section 112.3188, Florida Statutes, are amended to read:

347 112.3188 Confidentiality of information given to the Chief
 348 Inspector General, internal auditors, inspectors general, local
 349 chief executive officers, or other appropriate local officials.—

350 (2)

351 (b) All information received by a local chief executive

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352 officer or appropriate local official or information produced or
353 derived from fact-finding or investigations conducted pursuant
354 to the administrative procedure established by ordinance by a
355 local government as authorized by s. 112.3187(7)(b) ~~s.~~
356 ~~112.3187(8)(b)~~ is confidential and exempt from s. 119.07(1) and
357 s. 24(a), Art. I of the State Constitution, if the information
358 is being received or derived from allegations as set forth in
359 paragraph (1)(a) or paragraph (1)(b) and an investigation is
360 active.

361 (c) Information deemed confidential under this section may
362 be disclosed by the Chief Inspector General, agency inspector
363 general, local chief executive officer, or other appropriate
364 local official receiving the information if the recipient
365 determines that the disclosure of the information is absolutely
366 necessary to prevent a substantial and specific danger to the
367 public's health, safety, or welfare or to prevent the imminent
368 commission of a crime. Information disclosed under this
369 subsection may be disclosed only to persons who are in a
370 position to prevent the danger to the public's health, safety,
371 or welfare or to prevent the imminent commission of a crime
372 based on the disclosed information.

- 373 1. An investigation is active under this section if:
- 374 a. It is an ongoing investigation or inquiry or collection
375 of information and evidence and is continuing with a reasonable,
376 good faith anticipation of resolution in the foreseeable future;
377 or
- 378 b. All or a portion of the matters under investigation or
379 inquiry are active criminal intelligence information or active
380 criminal investigative information as defined in s. 119.011.

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

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

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

388 c. A final decision has been rendered by the local
389 government or by the Division of Administrative Hearings
390 pursuant to s. 112.3187(7)(b) ~~s. 112.3187(8)(b)~~.

391 3. Notwithstanding paragraphs (a), (b), and this paragraph,
392 information or records received or produced under this section
393 which are otherwise confidential under law or exempt from
394 disclosure under chapter 119 retain their confidentiality or
395 exemption.

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

400 Section 5. Section 112.3189, Florida Statutes, is amended
401 to read:

402 112.3189 Investigative procedures upon receipt of
403 whistleblower ~~whistle-blower~~ information from certain state and
404 independent contractor employees.—

405 (1) This section only applies to the disclosure of
406 information as described in s. 112.3187(5) by an employee or
407 former employee of, or an applicant for employment with, a state
408 agency, as the term "state agency" is defined in s. 112.3187(3),
409 or by an employee or a former employee of a state agency's

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410 independent contractor ~~216.011~~, to the ~~Office of the Chief~~
411 ~~Inspector General of the Executive Office of the Governor~~ or to
412 the agency inspector general. If an agency does not have an
413 inspector general, the head of the state agency, as defined in
414 s. 112.3187(3) ~~216.011~~, shall designate an employee, in
415 consultation with the Chief Inspector General, who meets the
416 requirements provided in s. 20.055(4) to receive information
417 described in s. 112.3187(5). For purposes of this section and s.
418 112.3188 only, the employee designated by the head of the state
419 agency is ~~shall be~~ deemed an agency inspector general.

420 (2) To facilitate the receipt of information described in
421 subsection (1), the Chief Inspector General shall periodically
422 ~~maintain an in-state toll-free whistle-blower's hotline and~~
423 ~~shall~~ circulate among the various state agencies an advisory for
424 all employees which indicates how to file a whistleblower
425 complaint ~~the existence of the toll-free number and its purpose~~
426 ~~and provides an address to which written whistle-blower~~
427 ~~information may be forwarded.~~

428 (3) When a person alleges information described in s.
429 112.3187(5), the Chief Inspector General or agency inspector
430 general actually receiving such information shall within 20 days
431 of receiving such information determine:

432 (a) Whether the information disclosed is the type of
433 information described in s. 112.3187(5).

434 (b) Whether the source of the information is a person who
435 is an employee or former employee of, or an applicant for
436 employment with, a state agency, as defined in s. 112.3187(3),
437 or an employee or former employee of a state agency's
438 independent contractor ~~216.011~~.

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

447 (4) If the Chief Inspector General or agency inspector
 448 general under subsection (3) determines that the information
 449 disclosed is not the type of information described in s.
 450 112.3187(5), or that the source of the information is not a
 451 person who is an employee or former employee of, or an applicant
 452 for employment with, a state agency, as defined in s.
 453 112.3187(3), or an employee or a former employee of a state
 454 agency's independent contractor ~~216.011~~, or that the information
 455 disclosed does not demonstrate reasonable cause to suspect that
 456 an employee or agent of an agency or independent contractor has
 457 violated any federal, state, or local law, rule, or regulation,
 458 thereby creating and presenting a substantial and specific
 459 danger to the public's health, safety, or welfare, or has
 460 committed an act of gross mismanagement, gross misconduct
 461 ~~malfeasance, misfeasance~~, gross waste of public funds, or gross
 462 neglect of duty, the Chief Inspector General or agency inspector
 463 general shall notify the complainant of such fact and copy and
 464 return, upon request of the complainant, any documents and other
 465 materials that were provided by the complainant.

466 (5) ~~(a)~~ If the Chief Inspector General or agency inspector
 467 general under subsection (3) determines that the information

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468 disclosed is the type of information described in s.
469 112.3187(5), that the source of the information is from a person
470 who is an employee or former employee of, or an applicant for
471 employment with, a state agency, as defined in s. 112.3187(3),
472 or an employee or former employee of a state agency's
473 independent contractor ~~216.011~~, and that the information
474 disclosed demonstrates reasonable cause to suspect that an
475 employee or agent of an agency or independent contractor has
476 violated any federal, state, or local law, rule, or regulation,
477 thereby creating a substantial and specific danger to the
478 public's health, safety, or welfare, or has committed an act of
479 gross mismanagement, gross misconduct ~~malfeasance, misfeasance,~~
480 gross waste of public funds, or gross neglect of duty, the Chief
481 Inspector General or agency inspector general making such
482 determination shall then conduct an investigation, unless the
483 Chief Inspector General or the agency inspector general
484 determines, within 30 days after receiving the allegations from
485 the complainant, that such investigation is unnecessary. For
486 purposes of this subsection, the Chief Inspector General or the
487 agency inspector general shall consider the following factors,
488 but is not limited to only the following factors, when deciding
489 whether the investigation is not necessary:

490 (a)1. The gravity of the disclosed information compared to
491 the time and expense of an investigation.

492 (b)2. The potential for an investigation to yield
493 recommendations that will make state government more efficient
494 and effective.

495 (c)3. The benefit to state government to have a final
496 report on the disclosed information.

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497 ~~(d)4.~~ Whether the alleged whistleblower ~~whistle-blower~~
498 information primarily concerns personnel practices that may be
499 investigated under chapter 110.

500 ~~(e)5.~~ Whether another agency may be conducting an
501 investigation and whether any investigation under this section
502 could be duplicative.

503 ~~(f)6.~~ The time that has elapsed between the alleged event
504 and the disclosure of the information.

505 ~~(b) If the Chief Inspector General or agency inspector
506 general determines under paragraph (a) that an investigation is
507 not necessary, the Chief Inspector General or agency inspector
508 general making such determination shall:~~

509 ~~1. Copy and return, upon request of the complainant, any
510 documents and other materials provided by the individual who
511 made the disclosure.~~

512 ~~2. Inform in writing the head of the state agency for the
513 agency inspector general making the determination that the
514 investigation is not necessary and the individual who made the
515 disclosure of the specific reasons why an investigation is not
516 necessary and why the disclosure will not be further acted on
517 under this section.~~

518 (6) The agency inspector general may conduct an
519 investigation pursuant to subsection (5) ~~paragraph (5)(a)~~ only
520 if the person transmitting information to the agency inspector
521 general is an employee or a former employee of, or an applicant
522 for employment with, the agency inspector general's agency, or
523 is an employee or a former employee of the agency's independent
524 contractor. The agency inspector general shall:

525 (a) Conduct an investigation with respect to the

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526 information and any related matters.

527 (b) Submit to the complainant and the Chief Inspector
528 General, within 90 ~~60~~ days after the date on which a
529 determination to conduct an investigation is made under
530 subsection (5) ~~paragraph (5)(a)~~, a final written report that
531 sets forth the agency inspector general's findings, conclusions,
532 and recommendations, except as provided under subsection (11).
533 The complainant shall be advised in writing by the agency
534 inspector general ~~head~~ that the complainant may submit to the
535 Chief Inspector General and agency inspector general comments on
536 the final report within 10 ~~20~~ days of the date of the report and
537 that such comments will be attached to the final report.

538 (7) If the Chief Inspector General decides an investigation
539 should be conducted pursuant to subsection (5) ~~paragraph (5)(a)~~,
540 the Chief Inspector General shall either:

541 (a) Promptly transmit to the appropriate ~~head of the state~~
542 agency inspector general the information with respect to which
543 the determination to conduct an investigation was made, and such
544 agency inspector general ~~head~~ shall conduct an investigation and
545 submit to the Chief Inspector General a final written report
546 that sets forth the agency inspector general's ~~head's~~ findings,
547 conclusions, and recommendations; or

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

550 2. Submit to the complainant within 90 ~~60~~ days after the
551 date on which a determination to conduct an investigation is
552 made under subsection (5) ~~paragraph (5)(a)~~, a final written
553 report that sets forth the Chief Inspector General's findings,
554 conclusions, and recommendations, except as provided under

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555 subsection (11). The complainant shall be advised in writing by
556 the Chief Inspector General that the complainant may submit to
557 the Chief Inspector General comments on the final report within
558 10 ~~20~~ days of the date of the report and that such comments will
559 be attached to the final report.

560 (c) The Chief Inspector General may require an agency
561 inspector general or the employee designated as agency inspector
562 general under s. 112.3189(1) head to conduct an investigation
563 under paragraph (a) only if the information was transmitted to
564 the Chief Inspector General by:

565 1. An employee or a former employee of, or an applicant for
566 employment with, the agency, or an employee or a former employee
567 of the agency's independent contractor, that the information
568 concerns; or

569 2. An employee who obtained the information in connection
570 with the performance of the employee's duties and
571 responsibilities.

572 (8) Final reports required under this section must be
573 reviewed and signed by the person responsible for conducting the
574 investigation (agency inspector general, employee designated as
575 agency inspector general under s. 112.3189(1) agency head, or
576 Chief Inspector General) and must include:

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

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

580 (c) A summary of any evidence obtained from the
581 investigation.

582 (d) A listing of any violation or apparent violation of any
583 law, rule, or regulation.

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584 (e) A description of any action taken or planned as a
585 result of the investigation, such as:
586 1. A change in an agency rule, regulation, or practice.
587 2. The restoration of an aggrieved employee.
588 3. A disciplinary action against an employee.
589 4. The referral to the Department of Law Enforcement of any
590 evidence of a criminal violation.

591 (9) (a) A report required of the agency inspector general
592 ~~head~~ under paragraph (7) (a) shall be submitted to the Chief
593 Inspector General and the complainant within 90 ~~60~~ days after
594 the agency inspector general ~~head~~ receives the complaint from
595 the Chief Inspector General, except as provided under subsection
596 (11). The complainant shall be advised in writing by the agency
597 inspector general ~~head~~ that the complainant may submit to the
598 Chief Inspector General comments on the report within 10 ~~20~~ days
599 of the date of the report and that such comments will be
600 attached to the final report.

601 (b) Upon receiving a final report required under this
602 section, the Chief Inspector General shall review the report and
603 determine whether the report contains the information required
604 by subsection (8). If the report does not contain the
605 information required by subsection (8), the Chief Inspector
606 General shall determine why and note the reasons on an addendum
607 to the final report.

608 (c) The Chief Inspector General shall transmit any final
609 report under this section, any comments provided by the
610 complainant, and any appropriate comments or recommendations by
611 the Chief Inspector General to the Governor, the Legislative
612 Auditing Committee, the investigating agency, and the Chief

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613 Financial Officer.

614 (d) If the Chief Inspector General does not receive the
615 report of the agency inspector general ~~head~~ within the time
616 prescribed in paragraph (a), the Chief Inspector General may
617 conduct the investigation in accordance with paragraph (7)(b) or
618 request that another agency inspector general conduct the
619 investigation in accordance with subsection (6) and shall report
620 the complaint to the Governor, to the Joint Legislative Auditing
621 Committee, and to the investigating agency, together with a
622 statement noting the failure of the agency inspector general
623 ~~head~~ to file the required report.

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

627 (11) If an investigation under this section produces
628 evidence of a criminal violation, the report shall not be
629 transmitted to the complainant, and the agency head or agency
630 inspector general shall notify the Chief Inspector General and
631 the Department of Law Enforcement.

632 Section 6. Section 112.31895, Florida Statutes, is
633 reordered and amended to read:

634 112.31895 Investigative procedures in response to
635 retaliatory ~~prohibited personnel~~ actions.-

636 (1) COMPLAINT PROCEDURES.-

637 (a) If a disclosure or other protected activity under s.
638 112.3187 includes or results in alleged retaliatory action
639 ~~retaliation~~ by an employer, the employee or former employee of,
640 or applicant for employment with, a state agency, as defined in
641 s. 112.3187(3), or the employee or former employee of a state

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642 agency's independent contractor ~~216.011~~, that is so affected may
643 file a complaint alleging a retaliatory ~~prohibited personnel~~
644 action, which complaint must be made by filing a written and
645 signed complaint with the Office of the Chief Inspector General
646 in the Executive Office of the Governor or the Florida
647 Commission on Human Relations, no later than 90 ~~60~~ days after
648 the prohibited personnel action.

649 (b) Within 5 ~~three~~ working days after receiving a complaint
650 under this section, the office or officer receiving the
651 complaint shall acknowledge receipt of the complaint and provide
652 copies of the complaint and any other preliminary information
653 available concerning the disclosure of information under s.
654 112.3187 to each of the other parties named in paragraph (a) and
655 to the agency, ~~which parties shall each acknowledge receipt of~~
656 ~~such copies to the complainant.~~

657 ~~(3)(2)~~ FACT FINDING.—The Florida Commission on Human
658 Relations shall:

659 (a) Upon receipt of an ~~Receive any~~ allegation of a
660 retaliatory ~~prohibited~~ action prohibited by s. 112.3187,
661 including a proposed or potential action, ~~and~~ conduct an
662 investigation ~~informal fact finding regarding any allegation~~
663 ~~under this section, to the extent necessary~~ to determine whether
664 there are reasonable grounds to believe that a retaliatory
665 ~~prohibited~~ personnel action under s. 112.3187 has occurred, is
666 occurring, or is to be taken.

667 ~~(b) Notify the complainant, within 15 days after receiving~~
668 ~~a complaint, that the complaint has been received by the~~
669 ~~department.~~

670 ~~(b)(c)~~ Within 120 ~~90~~ days after ~~receiving~~ the complaint is

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671 filed, determine whether reasonable grounds exist to believe
672 that a retaliatory action occurred, is occurring, or is to be
673 taken provide the agency head and the complainant with a fact-
674 finding report that may include recommendations to the parties
675 or proposed resolution of the complaint. The fact-finding report
676 shall be presumed admissible in any subsequent or related
677 administrative or judicial review.

678 (2)(3) POWERS OF THE FLORIDA COMMISSION ON HUMAN RELATIONS
679 CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.-

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

683 1. Receive and investigate complaints from employees
684 alleging retaliation by state agencies, as the term "state
685 agency" is defined in s. 112.3187(3), and by independent
686 contractors ~~216.011~~.

687 2. Protect employees and applicants for employment with
688 such agencies from retaliatory actions ~~prohibited personnel~~
689 ~~practices~~ under s. 112.3187.

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

692 4. Recommend disciplinary proceedings pursuant to
693 investigation and appropriate agency rules and procedures.

694 5. Coordinate with the Chief Inspector General in the
695 Executive Office of the Governor and the Florida Commission on
696 Human Relations to receive, review, and forward to appropriate
697 agencies, legislative entities, or the Department of Law
698 Enforcement disclosures of a violation of any law, rule, or
699 regulation, or disclosures of gross mismanagement, malfeasance,

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700 misfeasance, nonfeasance, neglect of duty, or gross waste of
701 public funds.

702 6. Review rules pertaining to personnel matters issued or
703 proposed by the Department of Management Services, the Public
704 Employees Relations Commission, and other agencies, and, if the
705 Florida Commission on Human Relations finds that any rule or
706 proposed rule, on its face or as implemented, requires the
707 commission of a prohibited personnel practice, provide a written
708 comment to the appropriate agency.

709 7. Investigate, request assistance from other governmental
710 entities, and, if appropriate, bring actions concerning,
711 allegations of retaliation by state agencies under subparagraph
712 1.

713 8. Administer oaths, examine witnesses, take statements,
714 issue subpoenas, order the taking of depositions, order
715 responses to written interrogatories, and make appropriate
716 motions to limit discovery, pursuant to investigations under
717 subparagraph 1.

718 9. Intervene or otherwise participate, as a matter of
719 right, in any appeal or other proceeding arising under this
720 section before the Public Employees Relations Commission or any
721 other appropriate agency, except that the Florida Commission on
722 Human Relations must comply with the rules of the commission or
723 other agency and may not seek corrective action or intervene in
724 an appeal or other proceeding without the consent of the person
725 protected under ss. 112.3187-112.31895.

726 10. Conduct an investigation, in the absence of an
727 allegation, to determine whether reasonable grounds exist to
728 believe that a prohibited action or a pattern of prohibited

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729 action has occurred, is occurring, or is to be taken.

730 (b) Within 15 days after receiving a complaint that a
731 person has been discharged from employment allegedly for
732 engaging in disclosing protected activity information under s.
733 112.3187, the Florida Commission on Human Relations shall review
734 the information and determine whether temporary reinstatement is
735 appropriate under s. 112.3187(8)(f) ~~s. 112.3187(9)(f)~~. If the
736 Florida Commission on Human Relations so determines, based upon
737 a legal review of the complaint and accompanying materials, it
738 shall apply for an expedited order to show cause from the
739 appropriate agency or circuit court for the immediate
740 reinstatement of the employee who has been discharged subsequent
741 to the disclosure made under s. 112.3187, pending the ~~issuance~~
742 ~~of the final outcome of order on~~ the complaint.

743 (c) The Florida Commission on Human Relations may request
744 an agency or a circuit court to order a stay, on such terms as
745 the court requires, of any personnel action for 45 days if the
746 commission determines that reasonable grounds exist to believe
747 that a retaliatory action has occurred, is occurring, or is to
748 be taken. The commission may request that such stay be extended
749 for appropriate periods of time.

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

753 ~~(d) If the Florida Commission on Human Relations is unable~~
754 ~~to conciliate a complaint within 60 days after receipt of the~~
755 ~~fact-finding report, the Florida Commission on Human Relations~~
756 ~~shall terminate the investigation. Upon termination of any~~
757 ~~investigation, the Florida Commission on Human Relations shall~~

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758 ~~notify the complainant and the agency head of the termination of~~
759 ~~the investigation, providing a summary of relevant facts found~~
760 ~~during the investigation and the reasons for terminating the~~
761 ~~investigation. A written statement under this paragraph is~~
762 ~~presumed admissible as evidence in any judicial or~~
763 ~~administrative proceeding but is not admissible without the~~
764 ~~consent of the complainant.~~

765 ~~(c)1. The Florida Commission on Human Relations may request~~
766 ~~an agency or circuit court to order a stay, on such terms as the~~
767 ~~court requires, of any personnel action for 45 days if the~~
768 ~~Florida Commission on Human Relations determines that reasonable~~
769 ~~grounds exist to believe that a prohibited personnel action has~~
770 ~~occurred, is occurring, or is to be taken. The Florida~~
771 ~~Commission on Human Relations may request that such stay be~~
772 ~~extended for appropriate periods of time.~~

773 ~~(d)2. If, in connection with any investigation under this~~
774 ~~section, it is determined the Florida Commission on Human~~
775 ~~Relations determines that reasonable grounds exist to believe~~
776 ~~that a criminal violation has occurred which has not previously~~
777 ~~been reported prohibited action has occurred, is occurring, or~~
778 ~~is to be taken which requires corrective action, the Florida~~
779 ~~Commission on Human Relations shall report the determination~~
780 ~~together with any findings or recommendations to the agency head~~
781 ~~and may report that determination and those findings and~~
782 ~~recommendations to the Department of Law Enforcement and to the~~
783 ~~state attorney having jurisdiction over the matter Governor and~~
784 ~~the Chief Financial Officer. The Florida Commission on Human~~
785 ~~Relations may include in the report recommendations for~~
786 ~~corrective action to be taken.~~

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787 ~~3. If, after 20 days, the agency does not implement the~~
788 ~~recommended action, the Florida Commission on Human Relations~~
789 ~~shall terminate the investigation and notify the complainant of~~
790 ~~the right to appeal under subsection (4), or may petition the~~
791 ~~agency for corrective action under this subsection.~~

792 ~~4. If the Florida Commission on Human Relations finds, in~~
793 ~~consultation with the individual subject to the prohibited~~
794 ~~action, that the agency has implemented the corrective action,~~
795 ~~the commission shall file such finding with the agency head,~~
796 ~~together with any written comments that the individual provides,~~
797 ~~and terminate the investigation.~~

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

802 ~~(g)1. If, in connection with any investigation under this~~
803 ~~section, it is determined that reasonable grounds exist to~~
804 ~~believe that a criminal violation has occurred which has not~~
805 ~~been previously reported, the Florida Commission on Human~~
806 ~~Relations shall report this determination to the Department of~~
807 ~~Law Enforcement and to the state attorney having jurisdiction~~
808 ~~over the matter.~~

809 (e)2. If an alleged criminal violation has been reported,
810 the Florida Commission on Human Relations shall confer with the
811 Department of Law Enforcement and the state attorney before
812 proceeding with the investigation of the prohibited personnel
813 action and may defer the investigation pending completion of the
814 criminal investigation and proceedings. The Florida Commission
815 on Human Relations shall inform the complainant of the decision

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816 to defer the investigation and, if appropriate, of the
817 confidentiality of the investigation.

818 (f)~~(h)~~ If, in connection with any investigation under this
819 section, the Florida Commission on Human Relations determines
820 that reasonable grounds exist to believe that a violation of a
821 law, rule, or regulation has occurred, other than a criminal
822 violation or a prohibited action under this section, the
823 commission may report such violation to the head of the agency
824 involved. Within 30 days after the agency receives the report,
825 the agency head shall provide to the commission a certification
826 that states that the head of the agency has personally reviewed
827 the report and indicates what action has been or is to be taken
828 and when the action will be completed.

829 (g)~~(i)~~ During any investigation under this section,
830 disciplinary action may not be taken against any employee of a
831 state agency, as the term "state agency" is defined in s.
832 112.3187(3) ~~216.011~~, for reporting an alleged prohibited
833 personnel action that is under investigation, or for reporting
834 any related activity, or against any employee for participating
835 in an investigation without notifying the Florida Commission on
836 Human Relations.

837 (h)~~(j)~~ The Florida Commission on Human Relations may also
838 petition for an award of reasonable attorney's fees and expenses
839 from a state agency, as the term "state agency" is defined in s.
840 112.3187(3) ~~216.011~~, pursuant to s. 112.3187(8) ~~s. 112.3187(9)~~.

841 (4) NOTICE OF TERMINATION.-

842 (a) If the commission determines that reasonable grounds do
843 not exist to believe that a retaliatory action occurred, is
844 occurring, or is to be taken, the commission must issue a

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845 termination of investigation for no cause, which must provide
846 the reason for terminating the investigation to the state agency
847 and to the complainant.

848 (b)1. If the commission determines that reasonable grounds
849 exist to believe that a retaliatory action occurred, is
850 occurring, or is to be taken, the commission must issue a fact-
851 finding report which may include recommendations to the parties
852 or propose a resolution of the complaint. The commission has 60
853 days after the date of the report to attempt to resolve the
854 complaint. If the complaint remains unresolved upon expiration
855 of the 60-day period, the commission must issue a notice of
856 termination of investigation with cause which must provide to
857 the affected parties a summary of relevant facts found during
858 the investigation and the reason for terminating the
859 investigation.

860 2. A fact-finding report issued under this paragraph is
861 presumed admissible in evidence in any subsequent judicial or
862 administrative proceeding, but is not admissible without the
863 consent of the charging party.

864 (c) Upon receipt of the notice of termination of
865 investigation, a complainant may:

866 1. Bring a civil action in any court of competent
867 jurisdiction within 180 days after rendition of the notice; or

868 2. At least 60 days after rendition of the notice, file a
869 complaint with the Public Employees Relations Commission against
870 the employer-agency regarding the alleged retaliatory action.

871 The Public Employees Relations Commission has jurisdiction over
872 such complaints under ss. 112.3187 and 447.503(4) and (5).

873 Judicial review of any final order of the Public Employees

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874 Relations Commission shall be as provided in s. 120.68.

875 (d) The notice provisions of s. 768.28 do not apply to any
876 civil action brought pursuant to ss. 112.3187-112.31895.

877 ~~(4) RIGHT TO APPEAL.—~~

878 ~~(a) Not more than 60 days after receipt of a notice of~~
879 ~~termination of the investigation from the Florida Commission on~~
880 ~~Human Relations, the complainant may file, with the Public~~
881 ~~Employees Relations Commission, a complaint against the~~
882 ~~employer agency regarding the alleged prohibited personnel~~
883 ~~action. The Public Employees Relations Commission shall have~~
884 ~~jurisdiction over such complaints under ss. 112.3187 and~~
885 ~~447.503(4) and (5).~~

886 ~~(b) Judicial review of any final order of the commission~~
887 ~~shall be as provided in s. 120.68.~~

888 Section 7. Subsection (3) of section 112.31901, Florida
889 Statutes, is amended to read:

890 112.31901 Investigatory records.—

891 (3) This section does not apply to whistleblower ~~whistle-~~
892 ~~blower~~ investigations conducted pursuant to ss. 112.3187,
893 112.3188, 112.3189, and 112.31895.

894 Section 8. Subsection (13) of section 760.06, Florida
895 Statutes, is amended to read:

896 760.06 Powers of the commission.—Within the limitations
897 provided by law, the commission shall have the following powers:

898 (13) To receive complaints and coordinate all activities as
899 required by the Florida Public Whistleblower's ~~Whistle-blower's~~
900 Act pursuant to ss. 112.3187-112.31895.

901 Section 9. This act shall take effect July 1, 2016.