

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

26 definitions; revising the list of contractual services
 27 and commodities that are not subject to competitive-
 28 solicitation requirements; amending ss. 112.3188,
 29 112.3189, and 112.31895, F.S.; conforming provisions
 30 to changes made by the act; providing an
 31 appropriation; providing an effective date.

32

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

34

35 Section 1. Section 11.421, Florida Statutes, is created to
 36 read:

37 11.421 Florida Accountability Office.-

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

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

48 (3) The Auditor General shall employ qualified individuals
 49 for the office pursuant to s. 11.42.

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

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

56 (b) "Appropriations project" means a specific
57 appropriation or proviso that provides funding for a specified
58 entity that is a local government, private entity, or privately-
59 operated program. The term does not include an appropriation or
60 proviso:

61 1. Specifically authorized by statute;

62 2. That is part of a statewide distribution to local
63 governments;

64 3. Recommended by a commission, council, or other similar
65 entity created in statute to make annual funding
66 recommendations, provided that such appropriation does not
67 exceed the amount of funding recommended by the commission,
68 council, or other similar entity;

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

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

74 6. For a specified program, research initiative,
75 institute, center, or similar entity at a specific state college

76 or university recommended by the Board of Governors or the State
77 Board of Education in their Legislative Budget Request.

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

86 (d) "Gross mismanagement" has the same meaning as in s.
87 112.3187.

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

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

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

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

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

99 (a) The President of the Senate.

100 (b) The Speaker of the House of Representatives.

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

103 (d) The Auditor General.

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

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

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

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

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

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

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

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

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

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

172 (10) Each fiscal year, the Auditor General and the Florida
173 Accountability Officer shall conduct random audits and
174 inspections of at least one-third of the appropriations projects
175 appropriated in the prior year. Each audit and inspection must

176 include, but is not limited to, evaluating the performance of
 177 the recipient of the appropriations project and the effect and
 178 public value produced by the appropriations project.

179 Section 2. Subsections (1) through (5) of section 14.32,
 180 Florida Statutes, are renumbered as subsections (2) through (6),
 181 respectively, and new subsections (1) and (7) are added to that
 182 section, to read:

183 14.32 Office of Chief Inspector General.—

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

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

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

198 (c) "Independent contractor" has the same meaning as in s.
 199 112.3187.

200 (d) "Misconduct" means conduct which, though not illegal,

201 is inappropriate for a person in his or her specified position.

202 (e) "Waste" means the act of using or expending resources
203 unreasonably, carelessly, extravagantly, or for no useful
204 purpose.

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

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

223 (c) If the findings of an investigation conducted pursuant
224 to this subsection conclude that a public official, independent
225 contractor, or agency has committed fraud, waste, abuse,

226 mismanagement, or misconduct in government, the Chief Inspector
227 General or agency inspector general shall report such findings
228 to the Chief Financial Officer within 30 days after the
229 investigation is closed. Such public official, independent
230 contractor, or person responsible within the agency is
231 personally liable for repayment of the funds that were diverted
232 or lost as a result of the fraud, waste, abuse, mismanagement,
233 or misconduct in government. If the person liable fails to repay
234 such funds voluntarily and the state does not agree to a
235 settlement, the Chief Financial Officer shall bring a civil
236 action to recover the funds within 60 days after receipt of such
237 findings.

238 Section 3. Subsections (4) and (5) of section 17.325,
239 Florida Statutes, are renumbered as subsections (5) and (6),
240 respectively, and a new subsection (4) is added to that section,
241 to read:

242 17.325 Governmental efficiency hotline; duties of Chief
243 Financial Officer.—

244 (4) A copy of each suggestion or item of information
245 received through the hotline that is logged pursuant to this
246 section must be provided to the Florida Accountability Officer
247 by the 15th of each month.

248 Section 4. Paragraph (g) is added to subsection (7) of
249 section 20.055, Florida Statutes, to read:

250 20.055 Agency inspectors general.—

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

258 (g) Make determinations and reports as required by s.
259 14.32(7).

260 Section 5. Paragraphs (a) and (b) of subsection (1) and
261 subsection (2) of section 110.1245, Florida Statutes, are
262 amended, and a new subsection (6) is added to that section, to
263 read:

264 110.1245 Savings sharing program; bonus payments; other
265 awards.—

266 (1)(a) The Department of Management Services shall adopt
267 rules that prescribe procedures and promote a savings sharing
268 program for an individual or group of employees who propose
269 procedures or ideas that are adopted and that result in
270 eliminating or reducing state expenditures, including employees
271 reporting under the Whistle-blower's Act, if such proposals are
272 placed in effect and may be implemented under current statutory
273 authority.

274 (b) Each agency head shall recommend employees
275 individually or by group to be awarded an amount of money, which

276 amount shall be directly related to the cost savings realized.
277 Each proposed award and amount of money must be approved by the
278 Legislative Budget Commission, except an award under subsection
279 (6).

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

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

291 (b) Eligibility criteria as follows:

292 1. The employee must have been employed before ~~prior to~~
293 July 1 of that fiscal year and have been continuously employed
294 through the date of distribution.

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

297 3. The employee must have had no sustained disciplinary
298 action during the period beginning July 1 through the date the
299 bonus checks are distributed. Disciplinary actions include
300 written reprimands, suspensions, dismissals, and involuntary or

301 voluntary demotions that were associated with a disciplinary
302 action.

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

308 5. The employee must have demonstrated initiative in work
309 and have exceeded normal job expectations.

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

313 (c) A periodic evaluation process of the employee's
314 performance.

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

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

319 (f) A limitation on bonus distributions equal to 35
320 percent of the agency's total authorized positions. This
321 requirement may be waived by the Office of Policy and Budget in
322 the Executive Office of the Governor upon a showing of
323 exceptional circumstances.

324 (6) Each agency inspector general shall report employees
325 whose reports under the Whistle-blower's Act resulted in savings

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

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

350 (b) A Senior Management Service employee or employee in a

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

359 Section 6. Subsection (2), paragraph (e) of subsection
360 (3), and paragraph (b) of subsection (5) of section 112.3187,
361 Florida Statutes, are amended to read:

362 112.3187 Adverse action against employee for disclosing
363 information of specified nature prohibited; employee remedy and
364 relief.—

365 (2) LEGISLATIVE INTENT.—It is the intent of the
366 Legislature to prevent agencies or independent contractors from
367 taking retaliatory action against an employee who reports to an
368 appropriate agency violations of law on the part of a public
369 employer or independent contractor that create a substantial and
370 specific danger to the public's health, safety, or welfare. It
371 is further the intent of the Legislature to prevent agencies or
372 independent contractors from taking retaliatory action against
373 any person who discloses information to an appropriate agency
374 alleging improper use of governmental office, ~~gross~~ waste of
375 funds, or any other abuse or ~~gross~~ neglect of duty on the part

376 | of an agency, public officer, or employee.

377 | (3) DEFINITIONS.—As used in this act, unless otherwise
378 | specified, the following words or terms shall have the meanings
379 | indicated:

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

385 | (5) NATURE OF INFORMATION DISCLOSED.—The information
386 | disclosed under this section must include:

387 | (b) Any act or suspected act of gross mismanagement,
388 | malfeasance, misfeasance, ~~gross~~ waste of public funds, suspected
389 | or actual Medicaid fraud or abuse, or ~~gross~~ neglect of duty
390 | committed by an employee or agent of an agency or independent
391 | contractor.

392 | Section 7. Subsection (1) of section 112.3188, Florida
393 | Statutes, is amended to read:

394 | 112.3188 Confidentiality of information given to the Chief
395 | Inspector General, internal auditors, inspectors general, local
396 | chief executive officers, or other appropriate local officials.—

397 | (1) The name or identity of any individual who discloses
398 | in good faith to the Chief Inspector General or an agency
399 | inspector general, a local chief executive officer, or other
400 | appropriate local official information that alleges that an

401 employee or agent of an agency or independent contractor:
402 (a) Has violated or is suspected of having violated any
403 federal, state, or local law, rule, or regulation, thereby
404 creating and presenting a substantial and specific danger to the
405 public's health, safety, or welfare; or
406 (b) Has committed an act of gross mismanagement,
407 malfeasance, misfeasance, ~~gross~~ waste of public funds, or ~~gross~~
408 neglect of duty
409
410 may not be disclosed to anyone other than a member of the Chief
411 Inspector General's, agency inspector general's, internal
412 auditor's, local chief executive officer's, or other appropriate
413 local official's staff without the written consent of the
414 individual, unless the Chief Inspector General, internal
415 auditor, agency inspector general, local chief executive
416 officer, or other appropriate local official determines that:
417 the disclosure of the individual's identity is necessary to
418 prevent a substantial and specific danger to the public's
419 health, safety, or welfare or to prevent the imminent commission
420 of a crime; or the disclosure is unavoidable and absolutely
421 necessary during the course of the audit, evaluation, or
422 investigation.

423 Section 8. Paragraph (c) of subsection (3), subsection
424 (4), and paragraph (a) of subsection (5) of section 112.3189,
425 Florida Statutes, are amended to read:

426 | 112.3189 Investigative procedures upon receipt of whistle-
427 | blower information from certain state employees.—

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

440 | (4) If the Chief Inspector General or agency inspector
441 | general under subsection (3) determines that the information
442 | disclosed is not the type of information described in s.
443 | 112.3187(5), or that the source of the information is not a
444 | person who is an employee or former employee of, or an applicant
445 | for employment with, a state agency, as defined in s. 216.011,
446 | or that the information disclosed does not demonstrate
447 | reasonable cause to suspect that an employee or agent of an
448 | agency or independent contractor has violated any federal,
449 | state, or local law, rule, or regulation, thereby creating and
450 | presenting a substantial and specific danger to the public's

451 health, safety, or welfare, or has committed an act of gross
452 mismanagement, malfeasance, misfeasance, ~~gross~~ waste of public
453 funds, or ~~gross~~ neglect of duty, the Chief Inspector General or
454 agency inspector general shall notify the complainant of such
455 fact and copy and return, upon request of the complainant, any
456 documents and other materials that were provided by the
457 complainant.

458 (5) (a) If the Chief Inspector General or agency inspector
459 general under subsection (3) determines that the information
460 disclosed is the type of information described in s.
461 112.3187(5), that the source of the information is from a person
462 who is an employee or former employee of, or an applicant for
463 employment with, a state agency, as defined in s. 216.011, and
464 that the information disclosed demonstrates reasonable cause to
465 suspect that an employee or agent of an agency or independent
466 contractor has violated any federal, state, or local law, rule,
467 or regulation, thereby creating a substantial and specific
468 danger to the public's health, safety, or welfare, or has
469 committed an act of gross mismanagement, malfeasance,
470 misfeasance, ~~gross~~ waste of public funds, or ~~gross~~ neglect of
471 duty, the Chief Inspector General or agency inspector general
472 making such determination shall then conduct an investigation,
473 unless the Chief Inspector General or the agency inspector
474 general determines, within 30 days after receiving the
475 allegations from the complainant, that such investigation is

476 unnecessary. For purposes of this subsection, the Chief
477 Inspector General or the agency inspector general shall consider
478 the following factors, but is not limited to only the following
479 factors, when deciding whether the investigation is not
480 necessary:

481 1. The gravity of the disclosed information compared to
482 the time and expense of an investigation.

483 2. The potential for an investigation to yield
484 recommendations that will make state government more efficient
485 and effective.

486 3. The benefit to state government to have a final report
487 on the disclosed information.

488 4. Whether the alleged whistle-blower information
489 primarily concerns personnel practices that may be investigated
490 under chapter 110.

491 5. Whether another agency may be conducting an
492 investigation and whether any investigation under this section
493 could be duplicative.

494 6. The time that has elapsed between the alleged event and
495 the disclosure of the information.

496 Section 9. Paragraph (a) of subsection (3) of section
497 112.31895, Florida Statutes, is amended to read:

498 112.31895 Investigative procedures in response to
499 prohibited personnel actions.—

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

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

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

507 2. Protect employees and applicants for employment with
508 such agencies from prohibited personnel practices under s.
509 112.3187.

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

512 4. Recommend disciplinary proceedings pursuant to
513 investigation and appropriate agency rules and procedures.

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

522 6. Review rules pertaining to personnel matters issued or
523 proposed by the Department of Management Services, the Public
524 Employees Relations Commission, and other agencies, and, if the
525 Florida Commission on Human Relations finds that any rule or

526 | proposed rule, on its face or as implemented, requires the
527 | commission of a prohibited personnel practice, provide a written
528 | comment to the appropriate agency.

529 | 7. Investigate, request assistance from other governmental
530 | entities, and, if appropriate, bring actions concerning,
531 | allegations of retaliation by state agencies under subparagraph
532 | 1.

533 | 8. Administer oaths, examine witnesses, take statements,
534 | issue subpoenas, order the taking of depositions, order
535 | responses to written interrogatories, and make appropriate
536 | motions to limit discovery, pursuant to investigations under
537 | subparagraph 1.

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

546 | 10. Conduct an investigation, in the absence of an
547 | allegation, to determine whether reasonable grounds exist to
548 | believe that a prohibited action or a pattern of prohibited
549 | action has occurred, is occurring, or is to be taken.

550 | Section 10. Paragraph (e) of subsection (3) and subsection

551 (9) of section 287.057, Florida Statutes, are amended, and new
552 subsections (24) and (25) are added to that section, to read:

553 287.057 Procurement of commodities or contractual
554 services.—

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

561 (e) The following contractual services and commodities are
562 not subject to the competitive-solicitation requirements of this
563 section:

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

571 2. Academic program reviews if the fee for such services
572 does not exceed \$50,000.

573 3. Lectures by individuals.

574 4. Legal services, including attorney, paralegal, expert
575 witness, appraisal, or mediator services.

576 5. Health services involving examination, diagnosis,
577 treatment, prevention, medical consultation, or administration.
578 The term also includes, but is not limited to, substance abuse
579 and mental health services involving examination, diagnosis,
580 treatment, prevention, or medical consultation if such services
581 are offered to eligible individuals participating in a specific
582 program that qualifies multiple providers and uses a standard
583 payment methodology. Reimbursement of administrative costs for
584 providers of services purchased in this manner are also exempt.
585 For purposes of this subparagraph, the term "providers" means
586 health professionals and health facilities, or organizations
587 that deliver or arrange for the delivery of health services.

588 6. Services provided to persons with mental or physical
589 disabilities by not-for-profit corporations that have obtained
590 exemptions under s. 501(c)(3) of the United States Internal
591 Revenue Code or when such services are governed by Office of
592 Management and Budget Circular A-122. However, in acquiring such
593 services, the agency shall consider the ability of the vendor,
594 past performance, willingness to meet time requirements, and
595 price.

596 7. Medicaid services delivered to an eligible Medicaid
597 recipient unless the agency is directed otherwise in law.

598 8. Family placement services.

599 9. Prevention services related to mental health, including
600 drug abuse prevention programs, child abuse prevention programs,

601 and shelters for runaways, operated by not-for-profit
602 corporations. However, in acquiring such services, the agency
603 shall consider the ability of the vendor, past performance,
604 willingness to meet time requirements, and price.

605 10. Training and education services provided to injured
606 employees pursuant to s. 440.491(6).

607 11. Contracts entered into pursuant to s. 337.11.

608 12. Services or commodities provided by governmental
609 entities.

610 13. ~~Statewide~~ Public service announcement programs
611 ~~provided by a Florida statewide nonprofit corporation under s.~~
612 ~~501(c)(6) of the Internal Revenue Code~~ which have a guaranteed
613 documented match of at least \$3 to \$1.

614 (9) An agency shall not divide the solicitation of
615 commodities or contractual services so as to avoid the
616 requirements of subsections (1)-(3) or subsection (24).

617 (24) (a) For any contract in excess of \$50,000 that is
618 awarded through an invitation to negotiate or awarded without
619 competitive solicitation under paragraph (3)(c) or paragraph
620 (3)(e) or subsection (10), the proposal, offer, or response of
621 the contractor must include a good faith estimate of gross
622 profit for each year of the proposed contract, including renewal
623 years. If, in determining the good faith estimate of gross
624 profit, the contractor includes the cost of products or services
625 expected to be provided by a participant closely associated with

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

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

640 1. "Closely associated with the contractor" means the
641 contractor, principal of the contractor, or a family member or
642 business associate of a principal of the contractor is a
643 principal of the participant. "Principal" means a person who
644 owns at least 5 percent interest in the business or entity or is
645 a manager of the business or entity. "Business associate" means
646 a person or entity with whom a principal of the contractor has
647 substantial investment, employment, or partnership interests.

648 2. "Good faith estimate of gross profit" means a good
649 faith estimate of the total receipts expected under the contract
650 less the cost of providing contracted commodities and services

651 under the contract, not including overhead costs. "Overhead
652 costs" means all costs not directly related to contract
653 performance, including, but not limited to, marketing and
654 administrative expenses.

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

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

663 Section 11. Beginning in the 2018-2019 fiscal year, the
664 sum of \$3 million in recurring funds is appropriated from the
665 General Revenue Fund to the Office of the Auditor General to
666 fund the operations and investigations of the Florida
667 Accountability Office as created by this act.

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