

By Senator Brandes

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

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

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

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

(1) SHORT TITLE.—Sections 112.3187–112.31895 may be cited as the “Florida Public Whistleblower’s ~~Whistle-blower’s~~ Act.”

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

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

(a) “Agency” means any state, regional, county, local, or

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59 municipal government entity, whether executive, judicial, or
60 legislative; any official, officer, department, division,
61 bureau, commission, authority, or political subdivision therein;
62 or any public school, community college, or state university.

63 (b) "Employee" means a person who performs services for,
64 and under the control and direction of, or contracts with, an
65 agency or independent contractor for wages or other
66 remuneration. The term includes a current or former employee or
67 an applicant for employment.

68 (i)-(e) "Retaliatory Adverse personnel action" means the
69 discharge, suspension, transfer, or demotion of an any employee
70 or the withholding of bonuses, the reduction in salary or
71 benefits, or any other adverse action taken against an employee
72 within the terms and conditions of employment by an agency or
73 independent contractor which may dissuade a reasonable employee
74 from reporting or disclosing any protected activity described in
75 subparagraphs (h)1. and 2.

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

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

83 (d)-(e) "Gross mismanagement" means a continuous pattern of
84 managerial abuses, wrongful or arbitrary and capricious actions,
85 or fraudulent or criminal conduct which may have a substantial
86 adverse economic impact.

87 (f) "Malfeasance" means engaging in misconduct or

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88 wrongdoing with a disregard of the employer's interests or the
89 employee's duties and obligations to the public.

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

92 (h) "Protected activity" means any of the following:

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

97 2. The disclosure of information to an appropriate agency
98 or supervisory official alleging acts of gross mismanagement,
99 malfeasance, misfeasance, gross misconduct, gross waste of
100 public funds, Medicaid fraud or abuse, or gross neglect of duty
101 on the part of an agency, public officer, or employee.

102 3. Participation in an investigation, hearing, or other
103 inquiry pursuant to this section by an agency or federal
104 government entity.

105 4. Refusal to participate in any retaliatory action
106 prohibited by this section.

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

110 (4) ACTIONS PROHIBITED.—

111 (a) An agency or independent contractor shall not dismiss,
112 discipline, or take any other retaliatory ~~adverse personnel~~
113 action against an employee for participating in protected
114 activity or for disclosing information pursuant to subsection
115 (6) the provisions of this section.

116 (b) ~~An agency or independent contractor shall not take any~~

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117 ~~adverse action that affects the rights or interests of a person~~
 118 ~~in retaliation for the person's disclosure of information under~~
 119 ~~this section.~~

120 ~~(c) The provisions of~~ This subsection is ~~shall~~ not be
 121 applicable when an employee or person discloses information
 122 known, or which reasonably should be known, by the employee or
 123 person to be false.

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

126 1. A person who has committed, or intentionally
 127 participated in committing, a violation or suspected violation
 128 for which protection under ss. 112.3187-112.31895 is being
 129 sought.

130 2. A person while he or she is under the care, custody, or
 131 control of the state correctional system, or after release from
 132 the care, custody, or control of the state correctional system,
 133 with respect to circumstances that occurred during any period of
 134 incarceration.

135 (5) NATURE OF INFORMATION DISCLOSED.—

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

138 1. (a) Any violation or suspected violation of any federal,
 139 state, or local law, rule, or regulation committed by an
 140 employee or agent of an agency or independent contractor which
 141 creates and presents a substantial and specific danger to the
 142 public's health, safety, or welfare; or—

143 2. (b) Any act or reasonably suspected act of gross
 144 mismanagement, malfeasance, misfeasance, gross misconduct, gross
 145 waste of public funds, ~~suspected or actual~~ Medicaid fraud or

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146 abuse, or gross neglect of duty committed by an employee or
147 agent of an agency or independent contractor.

148 (b) Information disclosed by an employee or former employee
149 of an independent contractor must relate to provisions of the
150 contract between the agency and the independent contractor.

151 (6) TO WHOM INFORMATION DISCLOSED AND METHODS OF
152 REPORTING.—

153 (a) Information disclosed under this section alleging an
154 action on the part of a public employer or an independent
155 contractor which creates a substantial and specific danger to
156 the public's health, safety, or welfare, or alleging gross waste
157 of funds or any other abuse or gross neglect of duty on the part
158 of an agency, a public officer, or an employee, must be
159 disclosed to the chief inspector general, agency inspector
160 general or employee designated as agency inspector general under
161 s. 112.3189(1), inspectors general under s. 20.055, or the
162 Florida Commission on Human Relations.

163 (b) The information disclosed by an employee or a person
164 pursuant to this subsection or subsection (5) must be submitted
165 in the form of a written and signed complaint to one of the
166 following:

167 1. The employee's supervisory official, the Chief Inspector
168 General as defined in s. 14.32(1), the agency inspector general,
169 the employee designated as agency inspector general under s.
170 112.3189(1), inspectors general under s. 20.055, or to the
171 Florida Commission on Human Relations. Employees and independent
172 contractors of the Chief Inspector General, the employee
173 designated as an agency inspector general, or the Florida
174 Commission on Human Relations must meet the same requirements as

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175 others affected by this section; or

176 2. An agency or a federal governmental entity that has
177 authority to investigate, police, manage, or otherwise remedy
178 the violation or act.

179 (c) If a disclosure is related to a local governmental
180 entity, including any regional, county, or municipal entity;
181 special district; community college district; or school
182 district, or any political subdivision thereof, the information
183 must be disclosed to a chief executive officer, as defined in s.
184 447.203(9), or other appropriate local official.

185 (d) Information disclosed to any other person or entity
186 does not qualify for protection under this section ~~The~~
187 ~~information disclosed under this section must be disclosed to~~
188 ~~any agency or federal government entity having the authority to~~
189 ~~investigate, police, manage, or otherwise remedy the violation~~
190 ~~or act, including, but not limited to, the Office of the Chief~~
191 ~~Inspector General, an agency inspector general or the employee~~
192 ~~designated as agency inspector general under s. 112.3189(1) or~~
193 ~~inspectors general under s. 20.055, the Florida Commission on~~
194 ~~Human Relations, and the whistle-blower's hotline created under~~
195 ~~s. 112.3189. However, for disclosures concerning a local~~
196 ~~governmental entity, including any regional, county, or~~
197 ~~municipal entity, special district, community college district,~~
198 ~~or school district or any political subdivision of any of the~~
199 ~~foregoing, the information must be disclosed to a chief~~
200 ~~executive officer as defined in s. 447.203(9) or other~~
201 ~~appropriate local official.~~

202 ~~(7) EMPLOYEES AND PERSONS PROTECTED. This section protects~~
203 ~~employees and persons who disclose information on their own~~

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204 ~~initiative in a written and signed complaint; who are requested~~
205 ~~to participate in an investigation, hearing, or other inquiry~~
206 ~~conducted by any agency or federal government entity; who refuse~~
207 ~~to participate in any adverse action prohibited by this section;~~
208 ~~or who initiate a complaint through the whistle-blower's hotline~~
209 ~~or the hotline of the Medicaid Fraud Control Unit of the~~
210 ~~Department of Legal Affairs; or employees who file any written~~
211 ~~complaint to their supervisory officials or employees who submit~~
212 ~~a complaint to the Chief Inspector General in the Executive~~
213 ~~Office of the Governor, to the employee designated as agency~~
214 ~~inspector general under s. 112.3189(1), or to the Florida~~
215 ~~Commission on Human Relations. The provisions of this section~~
216 ~~may not be used by a person while he or she is under the care,~~
217 ~~custody, or control of the state correctional system or, after~~
218 ~~release from the care, custody, or control of the state~~
219 ~~correctional system, with respect to circumstances that occurred~~
220 ~~during any period of incarceration. No remedy or other~~
221 ~~protection under ss. 112.3187-112.31895 applies to any person~~
222 ~~who has committed or intentionally participated in committing~~
223 ~~the violation or suspected violation for which protection under~~
224 ~~ss. 112.3187-112.31895 is being sought.~~

225 (7) ~~(8)~~ REMEDIES.-

226 (a) Any employee of or applicant for employment with any
227 state agency or an independent contractor of a state agency, as
228 the term "state agency" is defined in s. 112.3187(3) ~~s. 216.011~~,
229 who is discharged, disciplined, or subjected to other
230 retaliatory ~~adverse personnel~~ action, or denied employment,
231 because he or she engaged in an activity protected by this
232 section may file a complaint with, ~~which complaint must be made~~

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233 ~~in accordance with s. 112.31895. Upon receipt of notice from the~~
234 ~~Florida Commission on Human Relations. The complaint must be~~
235 ~~made in accordance with the requirements of s. 112.31895 of~~
236 ~~termination of the investigation, the complainant may elect to~~
237 ~~pursue the administrative remedy available under s. 112.31895 or~~
238 ~~bring a civil action within 180 days after receipt of the~~
239 ~~notice.~~

240 (b) Within 60 days after the action prohibited by this
241 section, any local public employee protected by this section may
242 file a complaint with the appropriate local governmental
243 authority, if that authority has established by ordinance an
244 administrative procedure for handling such complaints or has
245 contracted with the Division of Administrative Hearings under s.
246 120.65 to conduct hearings under this section. The
247 administrative procedure created by ordinance must provide for
248 the complaint to be heard by a panel of impartial persons
249 appointed by the appropriate local governmental authority. Upon
250 hearing the complaint, the panel must make findings of fact and
251 conclusions of law for a final decision by the local
252 governmental authority. Within 180 days after entry of a final
253 decision by the local governmental authority, the public
254 employee who filed the complaint may bring a civil action in any
255 court of competent jurisdiction. If the local governmental
256 authority has not established an administrative procedure by
257 ordinance or contract, a local public employee may, within 180
258 days after the action prohibited by this section, bring a civil
259 action in a court of competent jurisdiction. For the purpose of
260 this paragraph, the term "local governmental authority" includes
261 any regional, county, or municipal entity, special district,

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262 community college district, or school district or any political
263 subdivision of any of the foregoing.

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

268 (8)~~(9)~~ RELIEF.—In any action brought under this section,
269 the relief must include the following:

270 (a) Reinstatement of the employee to the same position held
271 before the retaliatory ~~adverse~~ action was commenced, or to an
272 equivalent position or reasonable front pay as alternative
273 relief.

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

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

278 (d) Payment of reasonable costs, including attorney
279 ~~attorney's~~ fees, to a substantially prevailing employee, or to
280 the prevailing employer if the employee filed a frivolous action
281 in bad faith.

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

284 (f) Temporary reinstatement to the employee's former
285 position or to an equivalent position, pending the final outcome
286 on the complaint, if an employee complains of being discharged
287 in retaliation for a protected disclosure and if a court of
288 competent jurisdiction or the Florida Commission on Human
289 Relations, as applicable under s. 112.31895, determines that the
290 disclosure was not made in bad faith or for a wrongful purpose

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291 or occurred after an agency's initiation of a personnel action
 292 against the employee which includes documentation of the
 293 employee's violation of a disciplinary standard or performance
 294 deficiency. This paragraph does not apply to an employee of a
 295 municipality.

296 (9)~~(10)~~ AFFIRMATIVE DEFENSES.—It shall be an affirmative
 297 defense to any action brought pursuant to this section that:

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

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

304 (10)~~(11)~~ EXISTING RIGHTS.—Sections 112.3187-112.31895 do
 305 not diminish the rights, privileges, or remedies of an employee
 306 under any other law or rule or under any collective bargaining
 307 agreement or employment contract; however, the election of
 308 remedies in s. 447.401 also applies to whistleblower ~~whistle-~~
 309 ~~blower~~ actions.

310 Section 2. Section 112.3189, Florida Statutes, is amended
 311 to read:

312 112.3189 Investigative procedures upon receipt of
 313 whistleblower ~~whistle-blower~~ information from certain state and
 314 independent contractor employees.—

315 (1) This section only applies to the disclosure of
 316 information as described in s. 112.3187(5) by an employee or a
 317 former employee of, or an applicant for employment with, a state
 318 agency, as the term "state agency" is defined in s. 112.3187(3),
 319 or by an employee or a former employee of a state agency's

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320 independent contractor ~~s. 216.011~~, to the ~~Office of the Chief~~
321 ~~Inspector General of the Executive Office of the Governor~~ or to
322 the agency inspector general. If an agency does not have an
323 inspector general, the head of the state agency, as defined in
324 s. 112.3187(3) ~~s. 216.011~~, shall designate an employee, in
325 consultation with the Chief Inspector General, who meets the
326 requirements provided in s. 20.055(4) to receive information
327 described in s. 112.3187(5). For purposes of this section and s.
328 112.3188 only, the employee designated by the head of the state
329 agency is ~~shall be~~ deemed an agency inspector general.

330 (2) To facilitate the receipt of information described in
331 subsection (1), the Chief Inspector General shall periodically
332 ~~maintain an in-state toll-free whistle-blower's hotline and~~
333 ~~shall~~ circulate among the various state agencies an advisory for
334 all employees which indicates how to file a whistleblower
335 complaint ~~the existence of the toll-free number and its purpose~~
336 ~~and provides an address to which written whistle-blower~~
337 ~~information may be forwarded.~~

338 (3) When a person alleges information described in s.
339 112.3187(5), the Chief Inspector General or agency inspector
340 general actually receiving such information shall within 20 days
341 of receiving such information determine:

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

344 (b) Whether the source of the information is a person who
345 is an employee or former employee of, or an applicant for
346 employment with, a state agency, as defined in s. 112.3187(3),
347 or an employee or a former employee of a state agency's
348 independent contractor ~~s. 216.011~~.

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349 (c) Whether the information actually disclosed demonstrates
350 reasonable cause to suspect that an employee or agent of an
351 agency or independent contractor has violated any federal,
352 state, or local law, rule, or regulation, thereby creating and
353 presenting a substantial and specific danger to the public's
354 health, safety, or welfare, or has committed an act of gross
355 mismanagement, gross misconduct ~~malfeasance, misfeasance~~, gross
356 waste of public funds, or gross neglect of duty.

357 (4) If the Chief Inspector General or agency inspector
358 general under subsection (3) determines that the information
359 disclosed is not the type of information described in s.
360 112.3187(5), or that the source of the information is not a
361 person who is an employee or former employee of, or an applicant
362 for employment with, a state agency, as defined in s.
363 112.3187(3), or an employee or a former employee of a state
364 agency's independent contractor ~~s. 216.011~~, or that the
365 information disclosed does not demonstrate reasonable cause to
366 suspect that an employee or agent of an agency or independent
367 contractor has violated any federal, state, or local law, rule,
368 or regulation, thereby creating and presenting a substantial and
369 specific danger to the public's health, safety, or welfare, or
370 has committed an act of gross mismanagement, gross misconduct
371 ~~malfeasance, misfeasance~~, gross waste of public funds, or gross
372 neglect of duty, the Chief Inspector General or agency inspector
373 general shall notify the complainant of such fact and copy and
374 return, upon request of the complainant, any documents and other
375 materials that were provided by the complainant.

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

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378 disclosed is the type of information described in s.
379 112.3187(5), that the source of the information is from a person
380 who is an employee or a former employee of, or an applicant for
381 employment with, a state agency, as defined in s. 112.3187(3),
382 or an employee or a former employee of a state agency's
383 independent contractor ~~s. 216.011~~, and that the information
384 disclosed demonstrates reasonable cause to suspect that an
385 employee or agent of an agency or independent contractor has
386 violated any federal, state, or local law, rule, or regulation,
387 thereby creating a substantial and specific danger to the
388 public's health, safety, or welfare, or has committed an act of
389 gross mismanagement, gross misconduct ~~malfeasance, misfeasance,~~
390 gross waste of public funds, or gross neglect of duty, the Chief
391 Inspector General or agency inspector general making such
392 determination shall then conduct an investigation, unless the
393 Chief Inspector General or the agency inspector general
394 determines, within 30 days after receiving the allegations from
395 the complainant, that such investigation is unnecessary. For
396 purposes of this subsection, the Chief Inspector General or the
397 agency inspector general shall consider the following factors,
398 but is not limited to only the following factors, when deciding
399 whether the investigation is not necessary:

400 (a)1- The gravity of the disclosed information compared to
401 the time and expense of an investigation.

402 (b)2- The potential for an investigation to yield
403 recommendations that will make state government more efficient
404 and effective.

405 (c)3- The benefit to state government to have a final
406 report on the disclosed information.

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

410 ~~(e)5.~~ Whether another agency may be conducting an
411 investigation and whether any investigation under this section
412 could be duplicative.

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

415 ~~(b) If the Chief Inspector General or agency inspector
416 general determines under paragraph (a) that an investigation is
417 not necessary, the Chief Inspector General or agency inspector
418 general making such determination shall:~~

419 ~~1. Copy and return, upon request of the complainant, any
420 documents and other materials provided by the individual who
421 made the disclosure.~~

422 ~~2. Inform in writing the head of the state agency for the
423 agency inspector general making the determination that the
424 investigation is not necessary and the individual who made the
425 disclosure of the specific reasons why an investigation is not
426 necessary and why the disclosure will not be further acted on
427 under this section.~~

428 (6) The agency inspector general may conduct an
429 investigation pursuant to subsection (5) ~~paragraph (5)(a)~~ only
430 if the person transmitting information to the agency inspector
431 general is an employee or a former employee of, or an applicant
432 for employment with, the agency inspector general's agency, or
433 is an employee or a former employee of the agency's independent
434 contractor. The agency inspector general shall:

435 (a) Conduct an investigation with respect to the

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436 information and any related matters.

437 (b) Submit to the complainant and the Chief Inspector
438 General, within 90 ~~60~~ days after the date on which a
439 determination to conduct an investigation is made under
440 subsection (5) ~~paragraph (5)(a)~~, a final written report that
441 sets forth the agency inspector general's findings, conclusions,
442 and recommendations, except as provided under subsection (11).
443 The complainant shall be advised in writing by the agency
444 inspector general ~~head~~ that the complainant may submit to the
445 Chief Inspector General and agency inspector general comments on
446 the final report within 10 ~~20~~ days of the date of the report and
447 that such comments will be attached to the final report.

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

451 (a) Promptly transmit to the appropriate ~~head of the state~~
452 agency inspector general the information with respect to which
453 the determination to conduct an investigation was made, and such
454 agency inspector general ~~head~~ shall conduct an investigation and
455 submit to the Chief Inspector General a final written report
456 that sets forth the agency inspector general's ~~head's~~ findings,
457 conclusions, and recommendations; or

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

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

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465 subsection (11). The complainant shall be advised in writing by
466 the Chief Inspector General that the complainant may submit to
467 the Chief Inspector General comments on the final report within
468 10 ~~20~~ days of the date of the report and that such comments will
469 be attached to the final report.

470 (c) The Chief Inspector General may require an agency
471 inspector general or the employee designated as agency inspector
472 general under s. 112.3189(1) head to conduct an investigation
473 under paragraph (a) only if the information was transmitted to
474 the Chief Inspector General by:

475 1. An employee or a former employee of, or an applicant for
476 employment with, the agency, or an employee or a former employee
477 of the agency's independent contractor, that the information
478 concerns; or

479 2. An employee who obtained the information in connection
480 with the performance of the employee's duties and
481 responsibilities.

482 (8) Final reports required under this section must be
483 reviewed and signed by the person responsible for conducting the
484 investigation (agency inspector general, employee designated as
485 agency inspector general under s. 112.3189(1) agency head, or
486 Chief Inspector General) and must include:

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

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

490 (c) A summary of any evidence obtained from the
491 investigation.

492 (d) A listing of any violation or apparent violation of any
493 law, rule, or regulation.

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

- 496 1. A change in an agency rule, regulation, or practice.
- 497 2. The restoration of an aggrieved employee.
- 498 3. A disciplinary action against an employee.
- 499 4. The referral to the Department of Law Enforcement of any
500 evidence of a criminal violation.

501 (9) (a) A report required of the agency inspector general
502 ~~head~~ under paragraph (7) (a) shall be submitted to the Chief
503 Inspector General and the complainant within 90 ~~60~~ days after
504 the agency inspector general ~~head~~ receives the complaint from
505 the Chief Inspector General, except as provided under subsection
506 (11). The complainant shall be advised in writing by the agency
507 inspector general ~~head~~ that the complainant may submit to the
508 Chief Inspector General comments on the report within 10 ~~20~~ days
509 of the date of the report and that such comments will be
510 attached to the final report.

511 (b) Upon receiving a final report required under this
512 section, the Chief Inspector General shall review the report and
513 determine whether the report contains the information required
514 by subsection (8). If the report does not contain the
515 information required by subsection (8), the Chief Inspector
516 General shall determine why and note the reasons on an addendum
517 to the final report.

518 (c) The Chief Inspector General shall transmit any final
519 report under this section, any comments provided by the
520 complainant, and any appropriate comments or recommendations by
521 the Chief Inspector General to the Governor, the Legislative
522 Auditing Committee, the investigating agency, and the Chief

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523 Financial Officer.

524 (d) If the Chief Inspector General does not receive the
525 report of the agency inspector general ~~head~~ within the time
526 prescribed in paragraph (a), the Chief Inspector General may
527 conduct the investigation in accordance with paragraph (7)(b) or
528 request that another agency inspector general conduct the
529 investigation in accordance with subsection (6) and shall report
530 the complaint to the Governor, to the Joint Legislative Auditing
531 Committee, and to the investigating agency, together with a
532 statement noting the failure of the agency inspector general
533 ~~head~~ to file the required report.

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

537 (11) If an investigation under this section produces
538 evidence of a criminal violation, the report shall not be
539 transmitted to the complainant, and the agency head or agency
540 inspector general shall notify the Chief Inspector General and
541 the Department of Law Enforcement.

542 Section 3. Section 112.31895, Florida Statutes, is
543 reordered and amended to read:

544 112.31895 Investigative procedures in response to
545 retaliatory ~~prohibited personnel~~ actions.-

546 (1) COMPLAINT PROCEDURES.-

547 (a) If a disclosure or other protected activity under s.
548 112.3187 includes or results in alleged retaliatory action
549 ~~retaliation~~ by an employer, the employee or former employee of,
550 or applicant for employment with, a state agency, as defined in
551 s. 112.3187(3), or the employee or former employee of a state

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552 agency's independent contractor which ~~s. 216.011,~~ that is so
553 affected may file a complaint alleging a retaliatory ~~prohibited~~
554 ~~personnel~~ action, which complaint must be made by filing a
555 written and signed complaint with the Office of the Chief
556 Inspector General in the Executive Office of the Governor or the
557 Florida Commission on Human Relations, no later than 90 ~~60~~ days
558 after the prohibited personnel action.

559 (b) Within 5 ~~three~~ working days after receiving a complaint
560 under this section, the office or officer receiving the
561 complaint shall acknowledge receipt of the complaint and provide
562 copies of the complaint and any other preliminary information
563 available concerning the disclosure of information under s.
564 112.3187 to each of the other parties named in paragraph (a) and
565 to the agency, ~~which parties shall each acknowledge receipt of~~
566 ~~such copies to the complainant.~~

567 (3)-(2) FACT FINDING.—The Florida Commission on Human
568 Relations shall:

569 (a) Upon receipt of an ~~Receive any~~ allegation of a
570 retaliatory ~~personnel~~ action prohibited by s. 112.3187,
571 including a proposed or potential action, ~~and~~ conduct an
572 investigation ~~informal fact finding regarding any allegation~~
573 ~~under this section, to the extent necessary~~ to determine whether
574 there are reasonable grounds to believe that a retaliatory
575 ~~prohibited personnel~~ action under s. 112.3187 has occurred, is
576 occurring, or is to be taken.

577 ~~(b) Notify the complainant, within 15 days after receiving~~
578 ~~a complaint, that the complaint has been received by the~~
579 ~~department.~~

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

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581 filed, determine whether reasonable grounds exist to believe
 582 that a retaliatory action occurred, is occurring, or is to be
 583 taken ~~provide the agency head and the complainant with a fact-~~
 584 ~~finding report that may include recommendations to the parties~~
 585 ~~or proposed resolution of the complaint. The fact-finding report~~
 586 ~~shall be presumed admissible in any subsequent or related~~
 587 ~~administrative or judicial review.~~

588 (2)(3) POWERS OF THE FLORIDA COMMISSION ON HUMAN RELATIONS
 589 ~~CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.-~~

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

593 1. Receive and investigate complaints from employees
 594 alleging retaliation by state agencies, as the term "state
 595 agency" is defined in s. 112.3187(3), and by independent
 596 contractors ~~s. 216.011~~.

597 2. Protect employees and applicants for employment with
 598 such agencies from retaliatory actions ~~prohibited personnel~~
 599 ~~practices~~ under s. 112.3187.

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

602 4. Recommend disciplinary proceedings pursuant to
 603 investigation and appropriate agency rules and procedures.

604 5. Coordinate with the Chief Inspector General in the
 605 Executive Office of the Governor and the Florida Commission on
 606 Human Relations to receive, review, and forward to appropriate
 607 agencies, legislative entities, or the Department of Law
 608 Enforcement disclosures of a violation of any law, rule, or
 609 regulation, or disclosures of gross mismanagement, malfeasance,

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610 misfeasance, nonfeasance, neglect of duty, or gross waste of
611 public funds.

612 6. Review rules pertaining to personnel matters issued or
613 proposed by the Department of Management Services, the Public
614 Employees Relations Commission, and other agencies, and, if the
615 Florida Commission on Human Relations finds that any rule or
616 proposed rule, on its face or as implemented, requires the
617 commission of a prohibited personnel practice, provide a written
618 comment to the appropriate agency.

619 7. Investigate, request assistance from other governmental
620 entities, and, if appropriate, bring actions concerning,
621 allegations of retaliation by state agencies under subparagraph
622 1.

623 8. Administer oaths, examine witnesses, take statements,
624 issue subpoenas, order the taking of depositions, order
625 responses to written interrogatories, and make appropriate
626 motions to limit discovery, pursuant to investigations under
627 subparagraph 1.

628 9. Intervene or otherwise participate, as a matter of
629 right, in any appeal or other proceeding arising under this
630 section before the Public Employees Relations Commission or any
631 other appropriate agency, except that the Florida Commission on
632 Human Relations must comply with the rules of the commission or
633 other agency and may not seek corrective action or intervene in
634 an appeal or other proceeding without the consent of the person
635 protected under ss. 112.3187-112.31895.

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

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

640 (b) Within 15 days after receiving a complaint that a
641 person has been discharged from employment allegedly for
642 engaging in disclosing protected activity information under s.
643 112.3187, the Florida Commission on Human Relations shall review
644 the information and determine whether temporary reinstatement is
645 appropriate under s. 112.3187(8)(f) ~~s. 112.3187(9)(f)~~. If the
646 Florida Commission on Human Relations so determines, based upon
647 a legal review of the complaint and accompanying materials, it
648 shall apply for an expedited order to show cause from the
649 appropriate agency or circuit court for the immediate
650 reinstatement of the employee who has been discharged subsequent
651 to the disclosure made under s. 112.3187, pending the ~~issuance~~
652 ~~of the final outcome of order on~~ the complaint.

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

656 ~~(d) If the Florida Commission on Human Relations is unable~~
657 ~~to conciliate a complaint within 60 days after receipt of the~~
658 ~~fact-finding report, the Florida Commission on Human Relations~~
659 ~~shall terminate the investigation. Upon termination of any~~
660 ~~investigation, the Florida Commission on Human Relations shall~~
661 ~~notify the complainant and the agency head of the termination of~~
662 ~~the investigation, providing a summary of relevant facts found~~
663 ~~during the investigation and the reasons for terminating the~~
664 ~~investigation. A written statement under this paragraph is~~
665 ~~presumed admissible as evidence in any judicial or~~
666 ~~administrative proceeding but is not admissible without the~~
667 ~~consent of the complainant.~~

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668 (c)~~(e)~~1. The Florida Commission on Human Relations may
669 request an agency or a circuit court to order a stay, on such
670 terms as the court requires, of any personnel action for 45 days
671 if the ~~Florida~~ commission ~~on Human Relations~~ determines that
672 reasonable grounds exist to believe that a retaliatory
673 ~~prohibited personnel~~ action has occurred, is occurring, or is to
674 be taken. The ~~Florida~~ commission ~~on Human Relations~~ may request
675 that such stay be extended for appropriate periods of time.

676 (d)2. If, in connection with any investigation under this
677 section, it is determined ~~the Florida Commission on Human~~
678 ~~Relations determines~~ that reasonable grounds exist to believe
679 that a criminal violation has occurred which has not previously
680 been reported ~~prohibited action has occurred, is occurring, or~~
681 ~~is to be taken which requires corrective action,~~ the Florida
682 Commission on Human Relations shall report the determination
683 ~~together with any findings or recommendations to the agency head~~
684 ~~and may report that determination and those findings and~~
685 ~~recommendations to the~~ Department of Law Enforcement and to the
686 state attorney having jurisdiction over the matter ~~Governor and~~
687 ~~the Chief Financial Officer.~~ The ~~Florida Commission on Human~~
688 ~~Relations may include in the report recommendations for~~
689 ~~corrective action to be taken.~~

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

695 4. ~~If the Florida Commission on Human Relations finds, in~~
696 ~~consultation with the individual subject to the prohibited~~

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697 ~~action, that the agency has implemented the corrective action,~~
698 ~~the commission shall file such finding with the agency head,~~
699 ~~together with any written comments that the individual provides,~~
700 ~~and terminate the investigation.~~

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

705 ~~(g)1. If, in connection with any investigation under this~~
706 ~~section, it is determined that reasonable grounds exist to~~
707 ~~believe that a criminal violation has occurred which has not~~
708 ~~been previously reported, the Florida Commission on Human~~
709 ~~Relations shall report this determination to the Department of~~
710 ~~Law Enforcement and to the state attorney having jurisdiction~~
711 ~~over the matter.~~

712 ~~(e)2.~~ (e)2. If an alleged criminal violation has been reported,
713 the Florida Commission on Human Relations shall confer with the
714 Department of Law Enforcement and the state attorney before
715 proceeding with the investigation of the prohibited personnel
716 action and may defer the investigation pending completion of the
717 criminal investigation and proceedings. The Florida Commission
718 on Human Relations shall inform the complainant of the decision
719 to defer the investigation and, if appropriate, of the
720 confidentiality of the investigation.

721 ~~(f)(h)~~ (f) If, in connection with any investigation under this
722 section, the Florida Commission on Human Relations determines
723 that reasonable grounds exist to believe that a violation of a
724 law, rule, or regulation has occurred, other than a criminal
725 violation or a prohibited action under this section, the

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726 commission may report such violation to the head of the agency
727 involved. Within 30 days after the agency receives the report,
728 the agency head shall provide to the commission a certification
729 that states that the head of the agency has personally reviewed
730 the report and indicates what action has been or is to be taken
731 and when the action will be completed.

732 (g)~~(i)~~ During any investigation under this section,
733 disciplinary action may not be taken against any employee of a
734 state agency, as the term "state agency" is defined in s.
735 112.3187(3) ~~s. 216.011~~, for reporting an alleged prohibited
736 personnel action that is under investigation, or for reporting
737 any related activity, or against any employee for participating
738 in an investigation without notifying the Florida Commission on
739 Human Relations.

740 (h)~~(j)~~ The Florida Commission on Human Relations may also
741 petition for an award of reasonable attorney's fees and expenses
742 from a state agency, as the term "state agency" is defined in s.
743 112.3187(3) ~~s. 216.011~~, pursuant to s. 112.3187(8) ~~s.~~
744 112.3187(9).

745 (4) NOTICE OF TERMINATION.—

746 (a) If the Florida Commission on Human Relations determines
747 that reasonable grounds do not exist to believe that a
748 retaliatory action occurred, is occurring, or is to be taken,
749 the commission must issue a termination of investigation for no
750 cause, which must provide the reason for terminating the
751 investigation to the state agency and to the complainant.

752 (b)1. If the Florida Commission on Human Relations
753 determines that reasonable grounds exist to believe that a
754 retaliatory action occurred, is occurring, or is to be taken,

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755 the commission must issue a fact-finding report that may include
756 recommendations to the parties or propose a resolution of the
757 complaint. The commission has 60 days after the date of the
758 report to attempt to resolve the complaint. If the complaint
759 remains unresolved upon expiration of the 60-day period, the
760 commission must issue a notice of termination of investigation
761 with cause which must provide to the affected parties a summary
762 of relevant facts found during the investigation and the reason
763 for terminating the investigation.

764 2. A fact-finding report issued under this paragraph is
765 presumed admissible in evidence in any subsequent judicial or
766 administrative proceeding but is not admissible without the
767 consent of the charging party.

768 (c) Upon receipt of the notice of termination of
769 investigation, a complainant may:

770 1. Bring a civil action in any court of competent
771 jurisdiction within 180 days after rendition of the notice; or
772 2. At least 60 days after rendition of the notice, file a
773 complaint with the Public Employees Relations Commission against
774 the employer-agency regarding the alleged retaliatory action.
775 The Public Employees Relations Commission has jurisdiction over
776 such complaints under ss. 112.3187 and 447.503(4) and (5).
777 Judicial review of any final order of the Public Employees
778 Relations Commission shall be as provided in s. 120.68.

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

781 ~~(4) RIGHT TO APPEAL.—~~

782 ~~(a) Not more than 60 days after receipt of a notice of~~
783 ~~termination of the investigation from the Florida Commission on~~

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784 ~~Human Relations, the complainant may file, with the Public~~
785 ~~Employees Relations Commission, a complaint against the~~
786 ~~employer-agency regarding the alleged prohibited personnel~~
787 ~~action. The Public Employees Relations Commission shall have~~
788 ~~jurisdiction over such complaints under ss. 112.3187 and~~
789 ~~447.503(4) and (5).~~

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

792 Section 4. Paragraph (f) of subsection (2) of section
793 14.32, Florida Statutes, is amended to read:

794 14.32 Office of Chief Inspector General.—

795 (2) The Chief Inspector General shall:

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

803 Section 5. Paragraphs (a), (b), and (f) of subsection (7)
804 of section 20.055, Florida Statutes, are amended to read:

805 20.055 Agency inspectors general.—

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

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

816 (b) Receive and consider the complaints which do not meet
817 the criteria for an investigation under the Florida Public
818 Whistleblower's ~~Whistle-blower's~~ Act and conduct, supervise, or
819 coordinate such inquiries, investigations, or reviews as the
820 inspector general deems appropriate.

821 (f) Submit in a timely fashion final reports on
822 investigations conducted by the inspector general to the agency
823 head, except for whistleblower's ~~whistle-blower's~~
824 investigations, which shall be conducted and reported pursuant
825 to s. 112.3189.

826 Section 6. Paragraphs (b) and (c) of subsection (2) of
827 section 112.3188, Florida Statutes, are amended to read:

828 112.3188 Confidentiality of information given to the Chief
829 Inspector General, internal auditors, inspectors general, local
830 chief executive officers, or other appropriate local officials.-

831 (2)

832 (b) All information received by a local chief executive
833 officer or appropriate local official or information produced or
834 derived from fact-finding or investigations conducted pursuant
835 to the administrative procedure established by ordinance by a
836 local government as authorized by s. 112.3187(7)(b) ~~s.~~

837 ~~112.3187(8)(b)~~ is confidential and exempt from s. 119.07(1) and
838 s. 24(a), Art. I of the State Constitution, if the information
839 is being received or derived from allegations as set forth in
840 paragraph (1)(a) or paragraph (1)(b) and an investigation is
841 active.

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842 (c) Information deemed confidential under this section may
843 be disclosed by the Chief Inspector General, agency inspector
844 general, local chief executive officer, or other appropriate
845 local official receiving the information if the recipient
846 determines that the disclosure of the information is absolutely
847 necessary to prevent a substantial and specific danger to the
848 public's health, safety, or welfare or to prevent the imminent
849 commission of a crime. Information disclosed under this
850 subsection may be disclosed only to persons who are in a
851 position to prevent the danger to the public's health, safety,
852 or welfare or to prevent the imminent commission of a crime
853 based on the disclosed information.

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

855 a. It is an ongoing investigation or inquiry or collection
856 of information and evidence and is continuing with a reasonable,
857 good faith anticipation of resolution in the foreseeable future;
858 or

859 b. All or a portion of the matters under investigation or
860 inquiry are active criminal intelligence information or active
861 criminal investigative information as defined in s. 119.011.

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

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

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

869 c. A final decision has been rendered by the local
870 government or by the Division of Administrative Hearings

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871 pursuant to s. 112.3187(7)(b) ~~s. 112.3187(8)(b)~~.

872 3. Notwithstanding paragraphs (a), (b), and this paragraph,
873 information or records received or produced under this section
874 which are otherwise confidential under law or exempt from
875 disclosure under chapter 119 retain their confidentiality or
876 exemption.

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

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

883 112.31901 Investigatory records.—

884 (3) This section does not apply to whistleblower ~~whistle-~~
885 ~~blower~~ investigations conducted pursuant to ss. 112.3187,
886 112.3188, 112.3189, and 112.31895.

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

889 760.06 Powers of the commission.—Within the limitations
890 provided by law, the commission shall have the following powers:

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

894 Section 9. This act shall take effect July 1, 2019.