

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1111 Government Integrity
SPONSOR(S): Public Integrity & Ethics Committee, Tomkow
TIED BILLS: **IDEN./SIM. BILLS:** SB 1538

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|---------|--|
| 1) Public Integrity & Ethics Committee | 16 Y, 0 N, As CS | Kiner | Rubottom |
| 2) Appropriations Committee | 26 Y, 0 N | Keith | Pridgeon |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

The bill includes various provisions designed to promote integrity in government and identify and eliminate fraud, waste, abuse, mismanagement, and misconduct in government. Specifically, the bill:

- Creates the Florida Integrity Office under the Auditor General for the purpose of ensuring accountability and integrity in state and local government and facilitating the elimination of fraud, waste, abuse, mismanagement, and misconduct in government.
- Requires the Chief Inspector General (CIG) and agency inspectors general to determine whether there is reasonable probability that fraud, waste, abuse, mismanagement, or misconduct in government has occurred within six months of initiating an investigation of such activity.
- Provides a mechanism for the state to recover funds when the CIG or an agency inspector general determines a public official, independent contractor, or agency has committed fraud, waste, abuse, mismanagement, or misconduct in government.
- Requires the Chief Financial Officer to regularly forward to the Florida Integrity Officer copies of suggestions and information submitted through the state's 'Get Lean' hotline.
- Provides a financial incentive for agency employees to file 'Whistle-blower's Act' complaints and participate in investigations that lead to the recovery of funds.
- Broadens the competitive solicitation exemption for statewide broadcasting of public service announcements.
- Prohibits state or local tax incentive funds from being used to award or pay a state contractor for services provided or expenditures incurred pursuant to a state contract.
- For agency contracts over \$50,000, requires a contractor to include in the contract a good faith estimate of gross profit for each year of the contract, provides a process for the agency to review such estimate, and provides financial penalties for a contractor who misrepresents the estimate.
- Prohibits a state employee from lobbying for an appropriation and also participating in awarding any contract funded by the appropriation. The bill provides an exception for a state employee who is an agency head, employed in the Executive Office of the Governor or the Office of Policy and Budget, or an employee who is required to register as a lobbyist but whose primary job responsibilities do not include lobbying.

The bill is projected to have a significant fiscal impact to expenditures of the Auditor General. Provisions of the bill related to the creation of the Florida Integrity Office under the Auditor General are anticipated to cost approximately \$2.5 million to implement. However, the bill authorizes the Auditor General to use existing carryforward funds to cover any projected expenditures. The fiscal impact of other provisions of the bill on other state agencies are indeterminate, but likely insignificant, and are expected to be absorbed within existing agency resources. See Fiscal Comments section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Integrity Office (Sections 1 and 12)

Current Situation

The position of Auditor General is established by Art. III, s. 2 of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.¹ The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.²

The Auditor General conducts audits, examinations, and reviews of government programs as well as audits the accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee. The Auditor General conducts operational and performance audits on public records and information technology systems and reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.

Current law authorizes the Legislature, through its committees, to inspect and investigate the books, records, papers, documents, data, operation, and physical plant of any public agency in the state, including any confidential information.³ Current law also authorizes the Legislature, through its committees, to issue subpoena and other necessary process to compel the attendance of witnesses and issue subpoena duces tecum to compel the production of any books, letters, or other documentary evidence, including any confidential information, in reference to any matter under investigation.⁴

Effect of Proposed Changes

The bill creates the Florida Integrity Office under the Auditor General. The Florida Integrity Office will be led by the Florida Integrity Officer, who will be appointed by and serve at the pleasure of the Auditor General. Pursuant to the bill's provisions, the Florida Integrity Officer may receive and investigate any complaint alleging fraud, waste, abuse, mismanagement, or misconduct in connection with the expenditure of public funds. The following individuals may submit a complaint: the President of the Senate; the Speaker of the House of Representatives; the chair of an appropriations committee of the Senate or House; and the Auditor General.

Upon receipt of a valid complaint, the bill requires the Florida Integrity Officer to determine whether the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct. If the Florida Integrity Officer determines that the complaint is not supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, the Florida Integrity Officer must notify the complainant in writing, and the complaint must be closed.

If the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, mismanagement, or misconduct, the bill requires the Florida Integrity Officer to determine whether the matter is under investigation by a law enforcement agency, the Commission on Ethics, the Chief Financial Officer, the Office of the Chief Inspector General, or the applicable agency inspector general. If such an investigation has been initiated, the Florida Integrity Officer must notify the complainant in writing, and the complaint may be closed. If such an investigation has not been initiated, the bill requires the Florida Integrity Officer to conduct an investigation and issue a report of the

¹ Section 11.42(2), F.S.

² Section 11.42(5), F.S.

³ Section 11.143(2), F.S.

⁴ Section 11.143(3)(a), F.S.

investigative findings to the President of the Senate and the Speaker of the House. The Florida Integrity Officer may also refer the matter to the Auditor General, the appropriate law enforcement agency, the Chief Financial Officer, the Office of the Chief Inspector General, or the applicable agency inspector general.

Similar to the current general law authority given to each house of the Legislature through its respective committees,⁵ the bill gives the Florida Integrity Officer the authority to inspect and investigate the books, records, papers, documents, data, operation, and physical location of any public agency in the state, including any confidential information. The bill also gives the Florida Integrity Officer the authority to investigate the public records of any entity that has received direct appropriations.

The bill also authorizes the Florida Integrity Officer to request the Legislative Auditing Committee or any legislative committee to exercise existing powers⁶ to issue subpoenas and subpoenas duces tecum to compel testimony or the production of evidence when deemed necessary to an authorized investigation. The bill also provides the means of enforcing any subpoena issued pursuant to the bill's provisions.

Beginning with the 2021-2022 fiscal year, the bill requires the Auditor General and Florida Integrity Officer to, within available resources, randomly select and review appropriations projects appropriated in the prior fiscal year and, if appropriate, investigate and recommend an audit of such project. The bill requires that, at a minimum, the investigation or audit must include an evaluation of whether the recipient of the appropriations project administered the project in an efficient and effective manner. Pursuant to the bill, the term, 'appropriations project' means a specific appropriation or proviso providing funding for a specified entity that is a local government, private entity, or privately-operated program that is named or described. The term does not include an appropriation:

- Specifically authorized by statute;
- That is part of a statewide distribution to local governments;
- Recommended by a commission, council, or other similar entity created in statute to make annual funding recommendations, provided that such appropriation does not exceed the amount of funding recommended by the commission, council, or other similar entity;
- For a specific transportation facility that was part of the Department of Transportation's five-year work program submitted pursuant to s. 339.135, F.S.;
- For an education fixed capital outlay project that was submitted pursuant to s. 1013.60, F.S., or s. 1013.64, F.S.; or
- For a specified program, research initiative, institute, center, or similar entity at a specific state college or university recommended by the Board of Governors or the State Board of Education in its Legislative Budget Request.

The bill's definition of 'appropriations project' mirrors the definition of the term in current Senate and House Joint Rule 2.2, adopted for the 2018 – 2020 biennium.

Beginning with the 2021-2022 fiscal year, the bill requires the Auditor General and the Florida Integrity Officer, within available resources, to select and review, audit, or investigate the financial activities of:

- Political subdivisions, special districts, public authorities, public hospitals, state and local councils or commissions, units of local government, or public education entities in the state; and
- Any authorities, councils, commissions, direct-support organizations, institutions, foundations, or similar entities created by law or ordinance to pursue a public purpose, entitled by law or ordinance to any distribution of tax or fee revenues, or organized for the sole purpose of supporting one of the public entities listed above.

⁵ See Section 11.143(2), F.S.

⁶ See Section 11.143(3), F.S.

The bill has a projected annual fiscal impact to the state of approximately \$2.5 million associated with the creation and operation of the Florida Integrity Office. The bill authorizes the Auditor General to use carryforward funds to pay projected expenditures. (See the Fiscal Comments Section).

Auditor General Responsibilities (Section 2)

Current Situation

The United States Government Accountability Office is “an independent, nonpartisan agency that works for Congress. Often called the ‘congressional watchdog,’ the GAO examines how taxpayer dollars are spent and provides Congress and federal agencies with objective, reliable information to help the government save money and work more efficiently.”⁷ The GAO’s publication, ‘Government Auditing Standards’ (Yellow Book) provides “a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and to help improve government operations and services.”⁸ Among other things, the Yellow Book provides a standard definition for ‘abuse.’⁹

The Florida Department of Management Services (DMS) has promulgated Rule 60L-36.005, F.A.C., which sets forth the minimum standards of conduct that apply to all employees in the State Personnel System and the violation of which may result in dismissal.¹⁰

Current law requires the Auditor General to conduct operational audits¹¹ on state agencies, state universities, state colleges, district school boards, the Florida Clerks of Court Operations Corporation, water management districts, and the Florida School for the Deaf and the Blind at least every three years.¹² Current law also requires the Auditor General to conduct a financial audit¹³ on all state universities and state colleges on an annual basis.¹⁴ The Auditor General is required to perform a financial audit on district school boards in counties that have populations of 150,000 or more at least once every three years and annually in counties with populations of fewer than 150,000.¹⁵

If an operational or financial audit report indicates a district school board, state university, or state college has failed to take full corrective action in response to a recommendation that was included in the two preceding operational or financial audit reports, the Auditor General is required to notify the Legislative Auditing Committee. In such cases, the Legislative Auditing Committee may initiate actions that require the audited organization to demonstrate the steps it has taken towards corrective action.¹⁶

⁷ See the GAO’s website for more information here: <https://www.gao.gov/about/>.

⁸ See GAO, ‘Government Auditing Standards’ (July 2018) at pg. 1.

⁹ *Id* at pg. 114. The GAO definition for ‘abuse’ is “behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances.” The term includes the misuse of authority or position for personal gain or for the gain of an immediate or close family member or business associate.

¹⁰ Rule 60L-36.005, F.A.C. The rule defines misconduct as

¹¹ An ‘operational audit’ is an audit “whose purpose is to evaluate management’s performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management’s control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls. See Section 11.45(1)(g), F.S.

¹² Section 11.45(2)(f), F.S.

¹³ A ‘financial audit’ is an “examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards as adopted by the Board of Accountancy. When applicable, the scope of financial audits shall encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law.” See s. 11.45(1)(c), F.S.

¹⁴ Section 11.45(2)(c), F.S.

¹⁵ Section 11.45(2)(d), (e), F.S.

¹⁶ Section 11.45(7)(j), F.S.

This reporting cycle may result in the Legislative Auditing Committee not being notified of one of the above referenced entity's failure to take full corrective action for six or more years.

Effect of Proposed Changes

The bill codifies a definition for 'misconduct' and revises the definition for 'abuse'.¹⁷ The definition for 'abuse' mirrors the definition used by GAO in the Yellow Book. The definition for 'misconduct' mirrors the definition promulgated by DMS in Rule 60L-36.005, F.A.C.

The bill revises the Auditor General's notification responsibilities with respect to a district school board, state university, or state college failing to take full corrective action on an audit finding by shortening the cycle from three successive operational audits to two.

The bill requires the Auditor General to publish a report consolidating common operational audit findings for all state agencies, all state universities, all state colleges, and all district school boards at the conclusion of each three year cycle.

Inspectors General (Sections 3 and 6)

Current Situation

The Office of Chief Inspector General (CIG) is responsible for promoting accountability, integrity, and efficiency in agencies under the Governor's jurisdiction.¹⁸ The CIG monitors the activities of the agency inspectors general under the Governor's jurisdiction and is required to do the following:

- Initiate, supervise, and coordinate investigations, recommend policies, and carry out other activities designed to deter, detect, prevent, and eradicate fraud, waste, abuse, mismanagement, and misconduct in government;
- Investigate, upon receipt of a complaint or for cause, any administrative action of any agency the administration of which is under the direct supervision of the Governor;
- Request such assistance and information as may be necessary for the performance of the CIG's duties;
- Examine the records and reports of any agency the administration of which is under the direct supervision of the Governor;
- Coordinate complaint-handling activities with agencies;
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline to receive complaints and information concerning the possible violation of law or administrative rules, mismanagement, fraud, waste, abuse of authority, malfeasance, or a substantial or specific danger to the health, welfare, or safety of the public;
- Report expeditiously to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are recognizable grounds to believe that there has been a violation of criminal law or that a civil action should be initiated;
- Act as liaison with outside agencies and the federal government to promote accountability, integrity, and efficiency in state government;
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction;
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor; and
- Conduct special investigations and management reviews at the request of the Governor.¹⁹

¹⁷ The bill defines the term 'abuse' to mean "behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances." The term includes the misuse of authority or position for personal gain or for the gain of an immediate or close family member or business associate.

¹⁸ Section 14.32(1), F.S.

¹⁹ Section 14.32(2), F.S.

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency²⁰ to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Each agency OIG is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Providing central coordination of efforts to identify and remedy waste, abuse, and deficiencies to the agency head,²¹ or the CIG for agencies under the jurisdiction of the Governor; recommending corrective action concerning fraud, abuses, and deficiencies; and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.²²

With respect to investigations, each OIG must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate;
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law;
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include

²⁰ Section 20.055(1)(d), F.S., defines the term 'state agency' as each department created pursuant to ch. 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, the Office of Early Learning, and the state courts system.

²¹ Section 20.055(1)(a), F.S., defines the term 'agency head' as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.

²² Section 20.055(2), F.S.

freedom from any interference with investigations and timely access to records and other sources of information;

- At the conclusion of an investigation, the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report; and
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.²³

Effect of Proposed Changes

The bill requires the CIG and agency inspectors general to make a reasonable probability determination within six months of initiating an investigation of fraud, waste, abuse, mismanagement, or misconduct in government. Pursuant to the bill's provisions, if the investigation continues in the absence of reasonable probability that fraud, waste, abuse, mismanagement, or misconduct has occurred, the CIG or any agency inspector general must make a new determination every three months until the investigation is closed or reasonable probability is found. The bill provides definitions for the terms 'fraud,'²⁴ 'waste,'²⁵ 'abuse,'²⁶ and 'misconduct.'²⁷ The definitions for 'fraud,' 'waste,' and 'abuse' mirror the definitions used by GAO, as provided in the Green Book. The definition for 'misconduct' mirrors the definition promulgated by DMS in Rule 60L-36.005, F.A.C.

If the CIG or an agency inspector general determines that there is reasonable probability to believe a public official, independent contractor, or agency has committed fraud, waste, abuse, mismanagement, or misconduct in government, the bill requires the applicable inspector general to report such determination to the Florida Integrity Officer. Pursuant to the bill, such public officer, independent contractor, or agency employee responsible for the fraud, waste, abuse, mismanagement, or misconduct in government is liable for repayment of the funds diverted or lost. If the person liable fails to repay such funds voluntarily and the state does not agree to a settlement, the bill requires the CFO to bring a civil action to recover the funds.

Chief Financial Officer's Office of Fiscal Integrity (Section 4)

Current Situation

The Chief Financial Officer (CFO) is an elected constitutional Cabinet member.²⁸ The CFO serves as the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities.²⁹ Such responsibilities include, but are not limited to, auditing and adjusting accounts of officers and those indebted to the state,³⁰ paying state employee salaries,³¹ and reporting all disbursements of funds administered by the CFO.³²

²³ Section 20.055(7), F.S.

²⁴ The bill defines the term 'fraud' to mean "obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an entity's resources."

²⁵ The bill defines the term 'waste' to mean "the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose."

²⁶ The bill defines the term 'abuse' to mean "behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances." The term includes the misuse of authority or position for personal gain.

²⁷ The bill defines the term 'misconduct' to mean "conduct which, though not illegal, is inappropriate for a person in his or her specified position."

²⁸ FLA. CONST. art. IV, s. 4,

²⁹ FLA. CONST. art. IV, s. 4(c); s. 17.001, F.S.

³⁰ Section 17.04, F.S.

³¹ Section 17.09, F.S.

³² Section 17.11, F.S.

The CFO's Office of Fiscal Integrity's (OFI) mission is to detect and investigate the misappropriation or misuse of state assets in a manner that safeguards the interests of the state and its taxpayers. OFI is a criminal justice agency³³ with full statutory subpoena power.³⁴

According to OFI, OFI conducts criminal investigations into misbehavior by state employees that have been under review by their respective agency inspector general. Upon receiving the referral on the state employee, OFI may begin a full criminal investigation. If criminal charges are warranted, OFI will refer the matter to the proper charging authority.

According to OFI, OFI does not currently have the authority to commence an investigation based on a complaint from an employee of a state agency or state contractor.

Effect of Proposed Changes

The bill authorizes the CFO to commence an investigation based on a complaint or referral from any source, including an employee of a state agency or state contractor. The bill also explicitly authorizes an employee of a state agency or state contractor who has knowledge of suspected misuse of state funds to report such information to the CFO.

Chief Financial Officer's 'Get Lean' Program (Section 5)

Current Situation

Florida law requires the CFO to operate a 24-hour statewide toll-free hotline to receive information or suggestions from state residents on how to improve the operation of government, increase governmental efficiency, and eliminate waste in government.³⁵ The hotline consists of a telephone hotline and website. The CFO is required to advertise the hotline by posting notices in conspicuous places in state agency offices, city halls, county courthouses, and places in which there is exposure to significant numbers of the general public, including, but not limited to, local convenience stores, shopping malls, shopping centers, gas stations, or restaurants.³⁶ Additionally, the law allows the CFO to advertise the availability of the hotline in newspapers of general circulation within the state.³⁷ When advertising the hotline, the CFO is required to use the slogan, "Tell us where we can 'Get Lean.'"³⁸

Those that provide tips through the hotline may remain anonymous, but if the tipper provides his or her name, the name is kept confidential.³⁹ By law, the tipper is immune from liability for any use of the information and may not be subject to any retaliation by any state employee for providing the tip.⁴⁰

When a tip comes in to the hotline, the CFO's office is required to conduct an evaluation to determine if the tip is appropriate to be processed.⁴¹ If the tip is appropriate to be processed, the CFO's office is required to keep a record of each suggestion or item of information received in the tip.⁴²

If the tipper discloses that he or she is a state employee, the CFO's office may refer any information or suggestion from the tipper to an existing state awards program administered by the impacted agency.⁴³ If forwarded a suggestion or information from the CFO's office, the impacted agency is required to conduct a preliminary evaluation of the efficacy of the suggestion or information and provide the CFO's

³³ Section 20.121(2)(e), F.S.

³⁴ Section 17.05(2), F.S.

³⁵ Section 17.325(1), F.S.

³⁶ Section 17.325(2), F.S.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Section 17.325(4), F.S.

⁴¹ Section 17.325(3), F.S.

⁴² *Id.*

⁴³ *Id.*

office with a preliminary determination of the amount of revenue the state might save by implementing the suggestion or making use of the information.⁴⁴

Effect of Proposed Changes

The bill requires the CFO's office to provide a copy of each suggestion or item of information processed through the 'Get Lean' hotline to the Florida Integrity Officer by the 15th of the month following receipt of the suggestion or item of information.

Savings Sharing Program (Section 7)

Current Situation

Florida law provides a state 'Savings Sharing Program' for the purpose of providing a process by which state agencies can retain a portion of their budget for implementing internally generated program efficiencies and cost reductions and then redirect the savings to employees. By law, DMS is required to adopt rules that prescribe procedures for the program.⁴⁵

Each state agency is eligible to participate in the 'Savings Sharing Program' and each agency head is responsible for recommending employees individually or by group to be awarded an amount of money, which must be directly related to the cost savings realized.⁴⁶ All employees within the Career Service and Selected Exempt Service are eligible to receive awards, provided they meet the statutory eligibility criteria.⁴⁷

Additionally, the law allows the Chief Justice to establish a savings sharing program for comparable employees in the judicial branch.⁴⁸

Each proposed award and amount of money must be approved by the Legislative Budget Commission before distribution.⁴⁹

Effect of Proposed Changes

The bill creates a reward system for state employees whose reports under the Whistle-blower's Act result in savings or recovery of public funds in excess of \$1,000. The amount of the award will be determined by the amount saved or recovered, the employee's employment classification, and when more than one employee makes a relevant report, in proportion to each employee's contribution to the investigation that led to the recovery of such funds. The bill sets the following award amounts:

- Career Service Employee – 10 percent of savings or recovery certified, but not less than \$500 and not more than a total of \$50,000 in any year.
- Selected Exempt Service Employees and Senior Management Service – 5 percent of savings or recovery certified, but not more than \$1,000 in any year.

Pursuant to the bill, the agency head will recommend the employee or employees for awards and requires the funds be paid from the specific appropriation or trust fund from which the savings or recovery resulted.

⁴⁴ *Id.*

⁴⁵ Section 110.1245(1)(a), F.S.

⁴⁶ Section 110.1245(1)(b), (c), F.S.

⁴⁷ Section 110.1245(1)(c) and (2)(b), F.S.

⁴⁸ *Id.*

⁴⁹ Section 110.1245(1)(b), F.S.

The bill provides that these awards are not bonuses and do not require approval by the Legislative Budget Commission.

To protect the whistle-blower employee's identity, the bill allows employees to authorize an agent, trustee, or custodian to collect any award for which the employee is eligible on the employee's behalf.

Florida Whistle-blower's Act (Sections 8, 13 - 15)

Current Situation

The 'Florida Whistle-blower's Act' protects government employees from adverse actions from their employers or an independent contractor for reporting any act (or suspected act) of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty; or any violation (or suspected violation) of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor that creates and presents a substantial and specific danger to the public's health, safety, or welfare.⁵⁰ The 'Florida Whistle-blower's Act,' codified in ss. 112.3187 – 112.31895, F.S., governs the complaint filing and resolution process, provides investigatory procedures upon receipt of a complaint and in response to prohibited personnel actions, as well as provides for confidentiality of the complainant's name or identity.

Effect of Proposed Changes

The bill provides a definition for 'mismanagement' and defines it to mean "a continuous or repeated pattern of neglect of managerial duty, managerial abuses, wrongful or arbitrary and capricious actions, or deceptive, fraudulent, or criminal conduct which may have a substantial adverse economic impact." The bill also broadens the category of complaints that may be covered by the 'Florida Whistle-blower's Act.' Specifically, the bill covers complaints alleging 'mismanagement,' 'waste of public funds,' and 'neglect of duty' as opposed to 'gross mismanagement,' 'gross waste of public funds,' and 'gross neglect of duty' as under current law. The bill makes conforming changes to other portions of the Whistle-blower's Act consistent with the revised definitions and broader category of complaints.

Procurement of Commodities and Services (Section 9)

Current Situation

Chapter 287, F.S., regulates state agency⁵¹ procurement of personal property and services. DMS is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.⁵² DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.⁵³

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:⁵⁴

- Invitations to bid – used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required. In such cases,

⁵⁰ Section 112.3187(4), (5), F.S.

⁵¹ Section 287.012(1), F.S., defines the term 'agency' as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. The term 'agency' does not include the university and college boards of trustees or the state universities and colleges."

⁵² See ss. 287.032 and 287.042, F.S.

⁵³ *Id.*

⁵⁴ See ss. 287.012(6) and 287.057, F.S.

the contract is awarded to the responsible and responsive vendor who submits the lowest responsive bid;

- Requests for proposal – used when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables. Various combinations or versions of commodities or contractual services may be proposed by a responsive vendor to meet the specifications of the solicitation document. In such cases, the contract is awarded to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals;
- Invitations to negotiate – used when the agency intends to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value; and
- Single source contracts – used when the agency determines that only one vendor is available to provide a commodity or service at the time of purchase.

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process;⁵⁵ however, certain contractual services and commodities are exempt from this requirement,⁵⁶ or state or federal law may prescribe with whom the agency must contract,⁵⁷ or the rate of payment or the recipient of the fund may be established during the appropriations process.⁵⁸

Current law contains an exemption from the competitive solicitation requirement for statewide public service announcement programs provided by a Florida statewide nonprofit corporation under s. 501(c)(6) of the Internal Revenue Code that have a guaranteed documented match of at least \$3 to \$1.⁵⁹

Effect of Proposed Changes

The bill expands the current law competitive solicitation exemption for statewide public service announcements. Pursuant to the bill's provisions, the exemption will no longer require the public service announcement to be statewide, and will no longer require that it be provided by a 501(c)(6) corporation.

The bill sets new requirements for contracts in excess of \$50,000 awarded through the following processes:

- Invitation to negotiate;
- Single-source;
- Competitive solicitation exemption;
- State or federally mandated contracts; and
- Where appropriations process prescribes rate of payment or recipient of funds.

For these contracts in excess of \$50,000, the bill requires the contractor to include a good faith estimate of gross profit⁶⁰ for each year of the contract. If the contractor includes the cost of products or

⁵⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

⁵⁶ See s. 287.057(3), F.S.

⁵⁷ See s. 287.057(10), F.S.

⁵⁸ *Id.*

⁵⁹ See s. 287.057(3)(e)13., F.S.

⁶⁰ Pursuant to the bill, the phrase "good faith estimate of gross profit" means a good faith estimate of the total receipts expected under the contract less the cost of providing contracted commodities and services under the contract, not including overhead costs. "Overhead costs" means all costs not directly related to contract performance, including, but not limited to, marketing and administrative expenses.

services expected to be provided by a participant⁶¹ closely associated with the contractor,⁶² the contractor must name the participant, describe the association, and must provide a good faith estimate of gross profit for the participant for each year of the contract. Before awarding the contract, the agency must make a written determination that such estimated gross profit is not excessive and specify the reasons for such determination. If a contractor misrepresents the gross profit estimate, the contractor will be liable to the agency for three times the amount or value of the misrepresentation.

The effect of the proposed change will allow the agency, the Legislature, and the public to determine better the reasonable value of non-competitive procurements.

The bill also prohibits a state employee from lobbying for funding for a contract and also participating in the awarding of such contract. This provision of the bill does not apply to a state employee who is an agency head, employed in the Executive Office of the Governor or the Office of Policy and Budget, or an employee who is required to register as a lobbyist but whose primary job responsibilities do not include lobbying.

Tax Incentives (Section 10)

Current Situation

Chapter 288, F.S., governs the operation of numerous economic development programs, some of which provide tax credits, tax refunds, sales tax exemptions, cash grants, and other similar programs.

Effect of Proposed Changes

Notwithstanding any other law, the bill prohibits a tax incentive from being awarded or paid to a state contractor or any subcontractor for services provided or expenditures incurred pursuant to a state contract.

Department of Education Inspector General Investigations (Section 11)

Current Situation

The Department of Education's Office of Inspector General (DOE IG) is responsible for promoting accountability, efficiency, and effectiveness and detecting fraud and abuse within school districts, the Florida School for the Deaf and the Blind, and Florida College System institutions.⁶³

If the Commissioner of Education determines that a district school board, the Board of Trustees for the Florida School for the Deaf and the Blind, or a Florida College System institution board of trustees is unwilling or unable to address substantiated allegations made by any person relating to waste, fraud, or financial mismanagement within the school district, the Florida School for the Deaf and the Blind, or the Florida College System institution, the DOE IG is required to conduct, coordinate, or request investigations into such substantiated allegations.⁶⁴

⁶¹ Pursuant to the bill, the term 'participant' means a person or entity with whom the contractor expects to subcontract for services or commodities in carrying out a contract with an agency.

⁶² Pursuant to the bill, the phrase "closely associated with the contractor" means the contractor, a principal of the contractor, or a family member or business associate of a principal of the contractor is a principal of the participant. The term 'principal' means a person who owns at least 5 percent interest in the business or entity or is a manager of the business or entity. The term 'business associate' means a person or entity with whom a principal of the contractor has substantial investment, employment, or partnership interests.

⁶³ Section 1001.20(4)(e), F.S.

⁶⁴ *Id.*

Additionally, the DOE IG is required to investigate allegations or reports of possible fraud or abuse against a district school board made by any member of the Cabinet; the presiding officer of either house of the Legislature; a chair of a substantive or appropriations committee with jurisdiction; or a member of the board for which an investigation is sought.

Effect of Proposed Changes

To increase accountability, the bill requires the DOE IG to also investigate allegations or reports of possible waste, fraud, abuse, or mismanagement against a Florida College System institution made by any member of the Cabinet; the presiding officer of either house of the Legislature; a chair of a substantive or appropriations committee with jurisdiction; or a member of the board for which an investigation is sought. Additionally, the bill also requires the DOE IG to investigate allegations or reports of possible waste or mismanagement against a district school board made by any of the previously referenced members or officers.

Effective Date

The bill is effective July 1, 2020.

B. SECTION DIRECTORY.

- Section 1** creates s. 11.421, F.S., to establish a Florida Integrity Office within the Office of Auditor General.
- Section 2** amends s. 11.45, F.S., relating to Auditor General reporting requirements.
- Section 3** amends s. 14.32, F.S., relating to the Office of CIG.
- Section 4** amends s. 17.04, F.S., relating to the Chief Financial Officer's authority to audit and adjust accounts of officers and those indebted to the state.
- Section 5** amends s. 17.325, F.S., relating to Florida's 'Get Lean' hotline established and operated by the Chief Financial Officer.
- Section 6** amends s. 20.055, F.S., relating to agency inspectors general.
- Section 7** amends s. 110.1245, F.S., relating to the state 'Savings Sharing Program.'
- Section 8** amends s. 112.3187, F.S., relating to the 'Whistle-blower's Act'.
- Section 9** amends s. 287.057, F.S., relating to the procurement of commodities or contractual services.
- Section 10** creates s. 288.00001, F.S., relating to use of state or local incentive funds to pay for services.
- Section 11** amends s. 1001.20 F.S., relating to duties of the Inspector General of the Department of Education.
- Section 12** provides authority to the Auditor General to use carryforward funds to fund the establishment and operation of the Florida Integrity Office.
- Section 13** amends s. 112.3188, F.S., to conform provisions to changes made by the act.
- Section 14** amends s. 112.3189, F.S., to conform provisions to changes made by the act.
- Section 15** amends s. 112.31895, F.S., to conform provisions to changes made by the act.

Section 16 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Office of Auditor General, the projected annual fiscal impact is approximately \$2.5 million to staff and fund the newly created Florida Integrity Office.⁶⁵ However, only a portion of that amount would be needed in the first year as the office ramped up staffing and associated expenses. Additionally, some of the functions of the Office are not fully implemented until Fiscal Year 2021-22. The bill authorizes the Auditor General to use existing carryforward funds to fund the office, which are sufficient to cover such costs for more than three years, therefore no appropriation is necessary. The revisions to the state 'Savings Sharing Program' will have an indeterminate positive fiscal impact on agencies as they provide an incentive for agency employees to file Whistle-blower's Act complaints and participate in investigations that lead to the recovery of state or federal funds. Any award given pursuant to this provision will be paid from the specific appropriation or trust fund from which the savings or recovery resulted.

Additional reporting and tracking requirements assigned to agencies, as well as investigations of complaint referrals and processing whistle-blower complaints, can be absorbed within existing agency resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

⁶⁵ Florida Auditor General, Agency Analysis of 2020 House Bill 1111, p. 7 (Jan. 13, 2020)

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Thursday, January 23, 2020, the Public Integrity & Ethics Committee adopted two amendments to HB 1111 and subsequently reported the bill favorably. The amendments revised the bill in the following ways:

- Removed the requirement that the Chief Inspector General and agency inspectors general make referrals to the Commission on Ethics.
- Removed the requirement that the Florida Integrity Officer make referrals to the Commission on Ethics.

With the removal of the referral requirement, the current law process that allows the Governor, Florida Department of Law Enforcement, a state attorney, or a United States Attorney, to make a referral to the Commission on Ethics is maintained. Additionally, a person with knowledge of any alleged ethics violation may still file a complaint with the Commission on Ethics.

This bill analysis is drawn to CS/HB 1111.