

The Florida Senate
HOUSE MESSAGE SUMMARY

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: CS/CS/SB 1270, 1st Eng.
INTRODUCER: Community Affairs; Governmental Oversight; and Senator Lee
SUBJECT: Fiduciary Duty of Care for Appointed Public Officials and Executive Officers
DATE: March 12, 2020

I. Amendments Contained in Message:

House Amendment 1 - 064965 (body with title)

II. Summary of Amendments Contained in Message:

House Amendment 1 eliminates the fiduciary duty training requirement and provides that each appointed public official and executive officer must provide a written declaration that he or she has read, understands, and will comply with the fiduciary duty of care requirements at all times during service to the governmental entity. The amendment adds the phrase “or as authorized by law” to the standards for legal counsel with the effect of making said standards less stringent. The amendment also expressly states that nothing in the section related to the fiduciary duty of care shall be construed to create a cause of action against an executive officer, an appointed public official or a governmental entity.

House Amendment 1 also includes the substance of SB 1538, which is referred to the Governmental Oversight and Accountability, Ethics and Elections, and Rules committees. The bill has not been considered by any of these committees. This portion of the amendment:

1. Establishes the Florida Integrity Office (FIO) within the Office of the Auditor General
 - a. The Integrity Officer is appointed by the Auditor General
 - b. The FIO investigates complaints alleging fraud, waste, abuse, mismanagement, or misconduct (note that the Auditor General conducts audits to prevent and detect fraud, abuse, and waste) with the expenditure of public funds (state and local). These complaints may be submitted only by the President, Speaker, chair of an appropriations committee, or the Auditor General.
 - c. Current law permits the legislature and the Auditor General to inspect confidential information but must retain the status of that information. The bill allows the Integrity Officer, at his or her sole discretion, to breach that confidentiality.
 - d. The FIO must audit a randomly selected group of “appropriations projects” from the prior fiscal year. This review must evaluate whether the recipient administered the project in “an efficient and effective manner”.
 - e. If funds are available, the FIO may audit the financial activities of any political subdivision, special district, public authority, public hospital, state or local council or

commission, unit of local government, public education entity in this state, direct-support organization or other entity created by law. (The Auditor General has the authority to audit state agencies, universities, colleges, school boards, Florida Clerks of Court Operations Corporation, water management districts, the Florida School for the Deaf and Blind, and other entities identified by the Joint Legislative Auditing Committee.)

2. Defines the investigative authority of the Office of the Chief Inspector General
 - a. CIG is authorized to investigate allegations of fraud, abuse, waste, misconduct, and mismanagement. (current authority but the terms are defined statutorily under the bill)
3. Modifies the authority of the Chief Financial Officer
 - a. If CIG concludes a public official, independent contractor, or agency has committed fraud, waste, abuse, mismanagement, or misconduct in government, the CFO must initiate civil action to recover funds.
 - b. Allows the CFO to initiate an investigation relating to payment of state funds based on a complaint or referral from any source.
 - c. All “government efficiency hotline” suggestions or items must be reported to the FIO.
 - d. Modifies the State Shared Savings Program to allow a whistleblower to be awarded payments if the reports result in savings or recoveries to the state.
4. Addresses Other Issues
 - a. Requires any “public agency” contract for services entered into or amended on or after July 1, 2020, must authorize the public agency to inspect:
 - i. “financial records, papers, and documents of the contractor directly related to the execution of the contract or the expenditure of state funds”.
 - ii. “programmatic records, papers, and documents of the contractor that are necessary to monitor the performance of the contract or ensure that the terms of the contract are being met, as determined by the public agency.”
 - b. Prohibits most state employees registered to lobby the legislature, other than the agency head, from participating in the negotiation or award of contract required or expressly funded under a specific legislative appropriation or proviso.
 - c. Prohibits the award of a tax incentive to be paid to a state contractor or subcontractor for services provided or expenditures incurred pursuant to a state contract.
 - d. Appears to grant the Commissioner of Education and the IG for the Department of Education broader authority to investigate abuse, waste, and mismanagement in school boards and colleges.

The Auditor General has estimated the Florida Integrity Office will cost approximately \$2.5 million annually. The bill allows the Auditor General to use carryforward funds to pay for these costs.