

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1541 Government Accountability

SPONSOR(S): Toledo

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Public Integrity & Elections Committee	17 Y, 0 N	Rubottom	Rubottom
2) 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:

- 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 Legislative Auditing Committee 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.
- Requires specified terms be included in all contracts with public agencies.
- Broadens the competitive solicitation exemption for 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.
- Prohibits a state employee from lobbying for an appropriation and also participating in awarding any contract funded by the appropriation with exceptions for agency heads, certain employees of the Governor, or an employee who is required to register as a lobbyist but whose primary job responsibilities do not include lobbying.

The fiscal impact of the bill is indeterminate, but likely insignificant, and is expected to be absorbed within existing agency resources. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Auditor General Responsibilities (Section 1)

Current Situation

The United States Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress.¹ 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.² GAO’s publication, *Government Auditing Standards* (known as the “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.”³ Among other things, the Yellow Book provides a standard definition for “abuse.”⁴

The Florida Department of Management Services (DMS) has promulgated rules that set forth the minimum standards of conduct that apply to all employees in the State Personnel System, the violation of which may result in dismissal.⁵

Current law requires the Auditor General to conduct operational audits⁶ of 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.⁷ Current law also requires the Auditor General to conduct a financial audit⁸ of all state universities and state colleges on an annual basis.⁹ The Auditor General is required to perform a financial audit of 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 150,000.¹⁰

¹ GAO, <https://www.gao.gov/about> (last visited Mar. 23, 2021).

² *Id.*

³ GAO, *Government Auditing Standards 1* (July 2018).

⁴ *Id.* at 114. The GAO defines “abuse” as 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.

⁵ R. 60L-36.005, F.A.C., defines “misconduct” as conduct which, though not illegal or inappropriate for a state employee generally, is inappropriate for a person in the employee’s particular position.

⁶ S. 11.45(1)(g), F.S., defines an “operational audit” as 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.

⁷ S. 11.45(2)(f), F.S.

⁸ S. 11.45(1)(c), F.S., defines a “financial audit” as 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 must 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.

⁹ S. 11.45(2)(c), F.S.

¹⁰ S. 11.45(2)(d) and (e), F.S.

The Legislative Auditing Committee is defined in Florida Statutes to be a committee or committees designated by joint rule of the Legislature or by the presiding officers of the Legislatures acting separately or by agreement.¹¹ It is currently organized under Joint Rule Four of the Legislature.¹² It supports legislative oversight of public audits.

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.¹³ 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.¹⁴ 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 defines the term "abuse" in the audit law to include the misuse of authority or position for the benefit of another. The definition for "abuse" mirrors the definition used by GAO in the Yellow Book. The bill also makes a technical change to the definition of "fraud", substituting "entity's" for "organization's" to better reflect the range of audits conducted.

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 to two successive operational audits.

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 2 and 5)

Current Situation

The Office of Chief Inspector General (CIG) is responsible for promoting accountability, integrity, and efficiency in agencies under the Governor's jurisdiction.¹⁵ 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;

¹¹ S. 1.01(17), F.S.

¹² J.R. 4.1 creates the standing joint Legislative Auditing Committee. J.R. 4.5 delegates particular powers to the committee.

¹³ S. 11.45(7)(j), F.S.

¹⁴ *Id.*

¹⁵ S. 14.32(1), F.S.

- 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.¹⁶

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency¹⁷ 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,¹⁸ 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.¹⁹

With respect to investigations, each OIG must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement,

¹⁶ S. 14.32(2), F.S.

¹⁷ S. 20.055(1)(d), F.S., defines the term "state agency" as each department created pursuant to ch. 20, F.S., and 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.

¹⁸ S. 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.

¹⁹ S. 20.055(2), F.S.

misconduct, and other abuses in state government.²⁰ 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 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.²¹

Effect of Proposed Changes

The bill provides definitions for the terms "fraud,"²² "waste,"²³ "abuse,"²⁴ and "misconduct."²⁵ The definitions for "fraud," "waste," and "abuse" mirror the definitions used by GAO, as provided in the *Standards for Internal Control in the Federal Government* (known as the "Green Book").²⁶ The definition for "misconduct" mirrors the definition promulgated by DMS in r. 60L-36.005, F.A.C.

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.

If the CIG or an agency inspector general determines 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 Legislative Auditing Committee.

²⁰ S. 20.055(7), F.S.

²¹ *Id.*

²² The bill defines the term "fraud" as 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.

²³ The bill defines the term "waste" as the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

²⁴ The bill defines the term "abuse" as 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.

²⁵ The bill defines the term "misconduct" as conduct that, though not illegal, is inappropriate for a person in his or her specified position.

²⁶ GAO, *Standards for Internal Control in the Federal Government* 40 (September 2014).

Pursuant to the bill, such public official, 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. Such person or contractor must be provided a copy of the findings of the investigation determining their responsibility. The person or contractor may challenge the finding through an administrative hearing. If a hearing is held, a final order must be issued determining liability. The agency may settle the claim if doing so is in the best interests of the state. 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 3)

Current Situation

The Chief Financial Officer (CFO) is an elected constitutional Cabinet member.²⁷ 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.²⁸ Such responsibilities include, but are not limited to, examining, auditing, adjusting, and settling accounts of officers and those indebted to the state,²⁹ paying state employee salaries,³⁰ and reporting all disbursements of funds administered by the CFO.³¹

The CFO's Office of Fiscal Integrity (OFI) is a criminal justice agency³² with full statutory subpoena power.³³ OFI's 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.³⁴

According to OFI, it 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, it 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 4)

Current Situation

The CFO is required 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,

²⁷ Art. IV, s. 4(a), Fla. Const.

²⁸ Art. IV, s. 4(c), Fla. Const.; s. 17.001, F.S.

²⁹ S. 17.04, F.S.

³⁰ S. 17.09, F.S.; *see also* s. 17.28, F.S.

³¹ S. 17.11, F.S.

³² S. 20.121(2)(e)3., F.S.

³³ S. 17.05(2), F.S.

³⁴ Office of Fiscal Integrity, <https://www.myfloridacfo.com/division/difs/office-of-fiscal-integrity> (last visited Mar. 23, 2021).

³⁵ S. 17.325(1), F.S.

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 must 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, the impacted agency must conduct a preliminary evaluation of the efficacy of the suggestion or information and provide the CFO's 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 Legislative Auditing Committee by the 15th of the month following receipt of the suggestion or item of information.

Savings Sharing Program (Section 6)

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.⁴⁵ By law, DMS must adopt rules that prescribe procedures for the program.⁴⁶

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.⁴⁷ The Legislative Budget Commission must approve each proposed award before distribution.⁴⁸ All employees within the Career Service and Selected Exempt Service are eligible to receive awards, provided they meet the statutory eligibility criteria.⁴⁹

Additionally, the law allows the Chief Justice of the Florida Supreme Court to establish a savings sharing program for employees in the judicial branch.⁵⁰

³⁶ S. 17.325(2), F.S.

³⁷ *Id.*

³⁸ *Id.*

³⁹ S. 17.325(3), F.S.

⁴⁰ S. 17.325(4), F.S.

⁴¹ S. 17.325(3), F.S.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ S. 110.1245, F.S.

⁴⁶ S. 110.1245(1)(a), F.S.

⁴⁷ S. 110.1245(1)(b) and (c), F.S.

⁴⁸ S. 110.1245(1)(b), F.S.

⁴⁹ S. 110.1245(1)(c) and (2)(b), F.S.

⁵⁰ *Id.*

The “Whistle-blower’s Act”⁵¹ 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.⁵² The Whistle-blower’s Act governs the complaint filing and resolution process, provides investigatory procedures upon receipt of a complaint and in response to prohibited personnel actions, and provides for confidentiality of the complainant’s name or identity.

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, and the employee’s employment classification. When more than one employee makes a relevant report, they receive a reward proportionate 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 Employees – 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 Employee and Senior Management Service Employees – 5 percent of savings or recovery certified, but not more than \$1,000 in any year.

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

To protect the identity of the whistle-blower, 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 7-10)

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.⁵³ 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 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

⁵¹ Ss. 112.3187–112.31895, F.S.

⁵² S. 112.3187(4) and (5), F.S.

⁵³ Section 112.3187(4), (5), F.S.

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.

Contracts and the Procurement of Commodities and Services (Section 11)

Current Situation

Chapter 287, F.S., regulates state agency⁵⁴ 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.⁵⁵ DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.⁵⁶

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

- 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, 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; and
- 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.⁵⁷

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process.⁵⁸ However, certain contractual services and commodities are exempt from this requirement.⁵⁹ A contract for commodities or contractual services may be awarded without competition if state or federal law prescribes with whom the agency must contract,⁶⁰ or the rate of payment or the recipient of the fund may be established during the appropriations process.⁶¹

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 \$1.⁶²

⁵⁴ S. 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 does not include the university and college boards of trustees or the state universities and colleges.

⁵⁵ See ss. 287.032 and 287.042, F.S.

⁵⁶ *Id.*

⁵⁷ See ss. 287.012(6) and 287.057, F.S.

⁵⁸ S. 287.057(1), F.S., requires the procurement of commodities or contractual services that exceed the Category Two (\$35,000) threshold in s. 287.017, F.S., to be competitively bid.

⁵⁹ See s. 287.057(3), F.S.

⁶⁰ S. 287.057(10), F.S.

⁶¹ *Id.*

⁶² S. 287.057(3)(e)(13), F.S.

Effect of Proposed Changes

The bill expands the competitive solicitation exemption for statewide public service announcements. Specifically, the bill removes the provision that required the public service announcement to be statewide and provided by a 501(c)(6) corporation. This had the effect of a sole source mandate.

The bill also prohibits a state employee from lobbying for funding for a contract and 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 12)

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

The bill prohibits a tax incentive, notwithstanding any other law, 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 13)

Current Situation

The Office of Inspector General within the Department of Education (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 must conduct, coordinate, or request investigations into such substantiated allegations.⁶⁴

Additionally, the DOE-IG must 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.⁶⁵

Effect of Proposed Changes

To increase accountability, the bill requires the DOE-IG to also investigate allegations or reports of possible waste or financial mismanagement, in addition to fraud or abuse 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 requires the DOE-IG to investigate

⁶³ S. 1001.20(4)(e), F.S.

⁶⁴ *Id.*

⁶⁵ *Id.*

allegations or reports of possible waste or mismanagement against a district school board made by any of the previously referenced members or officers.

B. SECTION DIRECTORY:

Section 1. Amends s. 11.45, F.S., relating to Auditor General reporting requirements.

Section 2. Amends s. 14.32, F.S., relating to the OIG.

Section 3. Amends s. 17.04, F.S., relating to the CFO's authority to audit and adjust accounts of officers and those indebted to the state.

Section 4. Amends s. 17.325, F.S., relating to Florida's 'Get Lean' hotline.

Section 5. Amends s. 20.055, F.S., relating to agency inspectors general.

Section 6. Amends s. 110.1245, F.S., relating to the state 'Savings Sharing Program.'

Section 7. Amends s. 112.3187, F.S., relating to the 'Whistle-blower's Act'

Section 8. Amends s. 112.3188, F.S., to conform provisions to changes made in the act.

Section 9. Amends s. 112.3189, F.S., to conform provisions to changes made in the act.

Section 10. Amends s. 112.31805, F.S., to conform provisions to changes made in the act.

Section 11. Amends s. 287.057, F.S., relating to the procurement of commodities or contractual services.

Section 12. Creates s. 288.00001, F.S., relating to use of state or local incentive funds.

Section 13. Amends s. 1001.20 F.S., relating to duties of the DOE-IG.

Section 14. Provides an effective date of July 1, 2022.

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:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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 savings or 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. This bill does not appear to affect county or municipal governments.
2. Other:
None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor does it appear to require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

