

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

27 fact-finding responsibilities of the Florida
 28 Commission on Human Relations; revising commission
 29 powers and responsibilities; providing requirements
 30 for the termination of an investigation; amending ss.
 31 112.31901 and 760.06, F.S.; conforming provisions to
 32 changes made by the act; providing an effective date.
 33

34 Be It Enacted by the Legislature of the State of Florida:
 35

36 Section 1. Paragraph (f) of subsection (2) of section
 37 14.32, Florida Statutes, is amended to read:

38 14.32 Office of Chief Inspector General.—

39 (2) The Chief Inspector General shall:

40 (f) Coordinate the activities of the Florida Public
 41 Employee Whistleblower's ~~Whistle-blower's~~ Act pursuant to
 42 chapter 112 and maintain the whistleblower's ~~whistle-blower's~~
 43 hotline to receive complaints and information concerning the
 44 possible violation of law or administrative rules; gross~~;~~
 45 mismanagement; gross malfeasance; gross misfeasance; gross
 46 misconduct; gross waste of public funds; Medicaid fraud or
 47 program abuse; gross neglect of duty on the part of an agency,
 48 public officer, or employee; fraud;~~;~~ waste;~~;~~ abuse of
 49 authority;~~;~~ ~~malfeasance;~~ or a substantial or specific danger to
 50 the health, welfare, or safety of the public.

51 Section 2. Paragraphs (a), (b), and (f) of subsection (7)
 52 of section 20.055, Florida Statutes, are amended to read:

53 20.055 Agency inspectors general.—

54 (7) In carrying out the investigative duties and
 55 responsibilities specified in this section, each inspector
 56 general shall initiate, conduct, supervise, and coordinate
 57 investigations designed to detect, deter, prevent, and eradicate
 58 fraud, waste, mismanagement, misconduct, and other abuses in
 59 state government. For these purposes, each inspector general
 60 shall:

61 (a) Receive complaints and coordinate all activities of
 62 the agency as required by the Florida Public Employee
 63 Whistleblower's ~~Whistle-blower's~~ Act pursuant to ss. 112.3187-
 64 112.31895.

65 (b) Receive and consider the complaints which do not meet
 66 the criteria for an investigation under the Florida Public
 67 Employee Whistleblower's ~~Whistle-blower's~~ Act and conduct,
 68 supervise, or coordinate such inquiries, investigations, or
 69 reviews as the inspector general deems appropriate.

70 (f) Submit in a timely fashion final reports on
 71 investigations conducted by the inspector general to the agency
 72 head, except for whistleblower's ~~whistle-blower's~~
 73 investigations, which shall be conducted and reported pursuant
 74 to s. 112.3189.

75 Section 3. Section 112.3187, Florida Statutes, is amended
 76 to read:

77 112.3187 Retaliatory ~~Adverse~~ action against employee for
 78 disclosing information of specified nature prohibited; employee

79 remedy and relief.—

80 (1) SHORT TITLE.—Sections 112.3187-112.31895 may be cited
 81 as the "Florida Public Employee Whistleblower's ~~Whistle-blower's~~
 82 Act."

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

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

101 (a) "Agency" means any state, regional, county, local, or
 102 municipal government entity, whether executive, judicial, or
 103 legislative; any official, officer, department, division,
 104 bureau, commission, authority, or political subdivision therein;

105 the Citizens Property Insurance Corporation; or any public
106 school, community college, or state university.

107 (b) "Employee" means a person who performs services for,
108 and under the control and direction of, or contracts with, an
109 agency or independent contractor for wages or other
110 remuneration. The term includes a current or former employee or
111 an applicant for employment.

112 (c) "Gross misconduct" means a willful transgression of
113 law or established rule that is of such a degree or recurrence
114 as to show a substantial disregard of the employer's interests
115 or the employee's duties and obligations to the public.

116 (d) "Gross malfeasance" means engaging in misconduct or
117 wrongdoing by a public employee of such severity or frequency to
118 show substantial disregard for the state's or state contractor's
119 interests, or duties and obligations to the public.

120 (e) "Gross misfeasance" means the performance of a lawful
121 act in an improper or illegal manner by a public employee of
122 such severity or frequency to show substantial disregard for the
123 state's or state contractor's interests, or duties and
124 obligations to the public.

125 ~~(f)~~ (e) "Gross mismanagement" means a continuous pattern of
126 managerial abuses, wrongful or arbitrary and capricious actions,
127 or fraudulent or criminal conduct which may have a substantial
128 adverse economic impact.

129 ~~(g)~~ (d) "Independent contractor" means a person, other than
130 an agency, engaged in any business and who enters into a

131 contract, including a provider agreement, with an agency.

132 (h) "Protected activity" means:

133 1. The reporting to an appropriate agency or employee's
 134 supervisory official of violations of law on the part of a
 135 public employer or independent contractor which create a
 136 substantial and specific danger to the public's health, safety,
 137 or welfare.

138 2. The disclosure of information to an appropriate agency
 139 or supervisory official alleging acts of gross mismanagement,
 140 gross malfeasance, gross misfeasance, gross misconduct, gross
 141 waste of public funds, Medicaid fraud or program abuse, or gross
 142 neglect of duty on the part of an agency, public officer, or
 143 employee.

144 3. Participation in an investigation, hearing, or other
 145 inquiry as a victim, witness, or subject matter expert pursuant
 146 to this section by an agency or federal government entity.

147 4. Refusal to participate in any retaliatory action
 148 prohibited by this section.

149 (i)(e) "Retaliatory ~~Adverse personnel~~ action" means the
 150 discharge, suspension, transfer, or demotion of an ~~any~~ employee
 151 or the withholding of bonuses, the reduction in salary or
 152 benefits, or any other adverse action taken against an employee
 153 ~~within the terms and conditions of employment~~ by an agency or
 154 independent contractor taken subsequent to the reporting of
 155 information described in subsection (2) that was implemented to
 156 penalize or dissuade a reasonable employee from reporting any

157 activity set forth in subsection (2).

158 (j) "State agency" has the same meaning as provided in s.
159 216.011(1)(qq).

160 (4) ACTIONS PROHIBITED.—

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

166 ~~(b) An agency or independent contractor shall not take any~~
167 ~~adverse action that affects the rights or interests of a person~~
168 ~~in retaliation for the person's disclosure of information under~~
169 ~~this section.~~

170 (b)(e) The provisions of this subsection shall not be
171 applicable when an employee or person discloses information
172 known, or which reasonably should be known, by the employee or
173 person to be false.

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

176 1. A person who has committed, or intentionally
177 participated in committing, a violation or suspected violation
178 for which protection under ss. 112.3187-112.31895 is being
179 sought.

180 2. A person while he or she is under the care, custody, or
181 control of the state correctional system, or after release from
182 the care, custody, or control of the state correctional system,

183 with respect to circumstances that occurred during any period of
 184 incarceration.

185 (5) NATURE OF INFORMATION DISCLOSED.—

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

188 1.(a) Any violation or reasonably suspected violation of
 189 any federal, state, or local law, rule, or regulation committed
 190 by an employee or agent of an agency or independent contractor
 191 which creates and presents a substantial and specific danger to
 192 the public's health, safety, or welfare; or—

193 2.(b) Any act or reasonably suspected act of gross
 194 mismanagement, gross malfeasance, gross misfeasance, gross
 195 misconduct, gross waste of public funds, ~~suspected or actual~~
 196 Medicaid fraud or program abuse, or gross neglect of duty
 197 committed by an employee or agent of an agency or independent
 198 contractor.

199 (b) Information disclosed by an employee or former
 200 employee of an independent contractor must relate to provisions
 201 of the contract between the agency and the independent
 202 contractor.

203 (6) TO WHOM INFORMATION DISCLOSED AND METHODS OF
 204 REPORTING.—

205 (a) Information disclosed under this section alleging an
 206 action on the part of a public employer or independent
 207 contractor that creates a substantial and specific danger to the
 208 public's health, safety, or welfare, or alleging gross waste of

209 funds or any other abuse or gross neglect of duty on the part of
210 an agency, public officer, or employee, shall be disclosed to
211 the chief inspector general, agency inspector general or
212 employee designated as agency inspector general under s.
213 112.3189(1), inspectors general under s. 20.055, or the Florida
214 Commission on Human Relations.

215 (b) The information disclosed by an employee or person
216 pursuant to this subsection or subsection (5) must be submitted
217 in a written and signed complaint to one of the following:

218 1. The employee's supervisory official, the Chief
219 Inspector General as defined in s. 14.32(1), the agency
220 inspector general, the employee designated as agency inspector
221 general under s. 112.3189(1), inspectors general under s.
222 20.055, or to the Florida Commission on Human Relations.
223 Employees and independent contractors of the Chief Inspector
224 General, the employee designated as an agency inspector general,
225 or the Florida Commission on Human Relations must meet the same
226 requirements as others affected by this section; or
227 2. An agency or federal government entity that has
228 authority to investigate, police, manage, or otherwise remedy
229 the violation or act.

230 (c) If a disclosure is related to a local governmental
231 entity, including any regional, county, or municipal entity,
232 special district, community college district, or school district
233 or any political subdivision of any of the foregoing, the
234 information must be disclosed to a chief executive officer, as

235 defined in s. 447.203(9), or other appropriate local official.

236 (d) Information disclosed to any other person or entity
 237 does not qualify for protection under this section ~~The~~
 238 ~~information disclosed under this section must be disclosed to~~
 239 ~~any agency or federal government entity having the authority to~~
 240 ~~investigate, police, manage, or otherwise remedy the violation~~
 241 ~~or act, including, but not limited to, the Office of the Chief~~
 242 ~~Inspector General, an agency inspector general or the employee~~
 243 ~~designated as agency inspector general under s. 112.3189(1) or~~
 244 ~~inspectors general under s. 20.055, the Florida Commission on~~
 245 ~~Human Relations, and the whistle-blower's hotline created under~~
 246 ~~s. 112.3189. However, for disclosures concerning a local~~
 247 ~~governmental entity, including any regional, county, or~~
 248 ~~municipal entity, special district, community college district,~~
 249 ~~or school district or any political subdivision of any of the~~
 250 ~~foregoing, the information must be disclosed to a chief~~
 251 ~~executive officer as defined in s. 447.203(9) or other~~
 252 ~~appropriate local official.~~

253 ~~(7) EMPLOYEES AND PERSONS PROTECTED. This section protects~~
 254 ~~employees and persons who disclose information on their own~~
 255 ~~initiative in a written and signed complaint; who are requested~~
 256 ~~to participate in an investigation, hearing, or other inquiry~~
 257 ~~conducted by any agency or federal government entity; who refuse~~
 258 ~~to participate in any adverse action prohibited by this section;~~
 259 ~~or who initiate a complaint through the whistle-blower's hotline~~
 260 ~~or the hotline of the Medicaid Fraud Control Unit of the~~

261 ~~Department of Legal Affairs; or employees who file any written~~
 262 ~~complaint to their supervisory officials or employees who submit~~
 263 ~~a complaint to the Chief Inspector General in the Executive~~
 264 ~~Office of the Governor, to the employee designated as agency~~
 265 ~~inspector general under s. 112.3189(1), or to the Florida~~
 266 ~~Commission on Human Relations. The provisions of this section~~
 267 ~~may not be used by a person while he or she is under the care,~~
 268 ~~eustody, or control of the state correctional system or, after~~
 269 ~~release from the care, custody, or control of the state~~
 270 ~~correctional system, with respect to circumstances that occurred~~
 271 ~~during any period of incarceration. No remedy or other~~
 272 ~~protection under ss. 112.3187-112.31895 applies to any person~~
 273 ~~who has committed or intentionally participated in committing~~
 274 ~~the violation or suspected violation for which protection under~~
 275 ~~ss. 112.3187-112.31895 is being sought.~~

276 (7)(8) REMEDIES.-

277 (a) Any employee of or applicant for employment with any
 278 state agency or an independent contractor of a state agency, as
 279 the term "state agency" is defined in s. 112.3187(3)(j) ~~216.011~~,
 280 who is subject discharged, disciplined, or subjected to
 281 retaliatory other adverse personnel action, such as discharge,
 282 discipline, or denial of, ~~or denied~~ employment, because he or
 283 she engaged in an activity protected by this section may file a
 284 complaint with, ~~which complaint must be made in accordance with~~
 285 ~~s. 112.31895. Upon receipt of notice from the Florida Commission~~
 286 ~~on Human Relations. The complaint must be made in accordance~~

287 ~~with s. 112.31895 of termination of the investigation, the~~
288 ~~complainant may elect to pursue the administrative remedy~~
289 ~~available under s. 112.31895 or bring a civil action within 180~~
290 ~~days after receipt of the notice.~~

291 (b) Within 60 days after the action prohibited by this
292 section, any local public employee protected by this section may
293 file a complaint with the appropriate local governmental
294 authority, if that authority has established by ordinance an
295 administrative procedure for handling such complaints or has
296 contracted with the Division of Administrative Hearings under s.
297 120.65 to conduct hearings under this section. The
298 administrative procedure created by ordinance must provide for
299 the complaint to be heard by a panel of impartial persons
300 appointed by the appropriate local governmental authority. Upon
301 hearing the complaint, the panel must make findings of fact and
302 conclusions of law for a final decision by the local
303 governmental authority. Within 180 days after entry of a final
304 decision by the local governmental authority, the public
305 employee who filed the complaint may bring a civil action in any
306 court of competent jurisdiction. If the local governmental
307 authority has not established an administrative procedure by
308 ordinance or contract, a local public employee may, within 180
309 days after the action prohibited by this section, bring a civil
310 action in a court of competent jurisdiction. For the purpose of
311 this paragraph, the term "local governmental authority" includes
312 any regional, county, or municipal entity, special district,

313 community college district, or school district or any political
 314 subdivision of any of the foregoing.

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

319 ~~(8)-(9)~~ RELIEF.—In any action brought under this section,
 320 the relief must include the following:

321 (a) Reinstatement of the employee to the same position
 322 held before the retaliatory ~~adverse~~ action was commenced, or to
 323 an equivalent position or reasonable front pay as alternative
 324 relief.

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

327 (c) Compensation, if appropriate, for lost wages,
 328 benefits, or other lost remuneration caused by the retaliatory
 329 ~~adverse~~ action.

330 (d) Payment of reasonable costs, including attorney
 331 ~~attorney's~~ fees, to a substantially prevailing employee, or to
 332 the prevailing employer if the employee filed a frivolous action
 333 in bad faith.

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

336 (f) Temporary reinstatement to the employee's former
 337 position or to an equivalent position, pending the final outcome
 338 on the complaint, if an employee complains of being discharged

339 in retaliation for a protected disclosure and if a court of
340 competent jurisdiction or the Florida Commission on Human
341 Relations, as applicable under s. 112.31895, determines that the
342 disclosure was not made in bad faith or for a wrongful purpose
343 or occurred after an agency's initiation of a personnel action
344 against the employee which includes documentation of the
345 employee's violation of a disciplinary standard or performance
346 deficiency. This paragraph does not apply to an employee of a
347 municipality.

348 (9)~~(10)~~ AFFIRMATIVE DEFENSES.—It shall be an affirmative
349 defense to any action brought pursuant to this section that:

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

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

355 (10)~~(11)~~ EXISTING RIGHTS.—Sections 112.3187, 112.3189, and
356 112.31895 ~~112.3187–112.31895~~ do not diminish the rights,
357 privileges, or remedies of an employee under any other law or
358 rule or under any collective bargaining agreement or employment
359 contract; however, the election of remedies in s. 447.401 also
360 applies to whistleblower ~~whistle-blower~~ actions. The provisions
361 of s. 112.3188 regarding confidentiality of information
362 supersede the rights, privileges, or remedies of an employee
363 under any other law or rule or under any collective bargaining
364 agreement or employment contract that conflict.

365 Section 4. Paragraphs (b) and (c) of subsection (2) of
 366 section 112.3188, Florida Statutes, are amended to read:

367 112.3188 Confidentiality of information given to the Chief
 368 Inspector General, internal auditors, inspectors general, local
 369 chief executive officers, or other appropriate local officials.—

370 (2)

371 (b) All information received by a local chief executive
 372 officer or appropriate local official or information produced or
 373 derived from fact-finding or investigations conducted pursuant
 374 to the administrative procedure established by ordinance by a
 375 local government as authorized by s. 112.3187(7)(b)
 376 ~~112.3187(8)(b)~~ is confidential and exempt from s. 119.07(1) and
 377 s. 24(a), Art. I of the State Constitution, if the information
 378 is being received or derived from allegations as set forth in
 379 paragraph (1)(a) or paragraph (1)(b) and an investigation is
 380 active.

381 (c) Information deemed confidential under this section may
 382 be disclosed by the Chief Inspector General, agency inspector
 383 general, internal auditor, member or staff of the Florida
 384 Commission on Human Relations, local chief executive officer, or
 385 other appropriate local official receiving the information if
 386 the recipient determines that the disclosure of the information
 387 is absolutely necessary to prevent a substantial and specific
 388 danger to the public's health, safety, or welfare or to prevent
 389 the imminent commission of a crime. Information disclosed under
 390 this subsection may be disclosed only to persons who are in a

391 position to prevent the danger to the public's health, safety,
 392 or welfare or to prevent the imminent commission of a crime
 393 based on the disclosed information.

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

395 a. It is an ongoing investigation or inquiry or collection
 396 of information and evidence and is continuing with a reasonable,
 397 good faith anticipation of resolution in the foreseeable future;
 398 or

399 b. All or a portion of the matters under investigation or
 400 inquiry are active criminal intelligence information or active
 401 criminal investigative information as defined in s. 119.011.

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

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

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

409 c. A final decision has been rendered by the local
 410 government or by the Division of Administrative Hearings
 411 pursuant to s. 112.3187(7)(b) ~~112.3187(8)(b)~~.

412 3. Notwithstanding paragraphs (a), (b), and this
 413 paragraph, information or records received or produced under
 414 this section which are otherwise confidential under law or
 415 exempt from disclosure under chapter 119 retain their
 416 confidentiality or exemption.

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

421 Section 5. Section 112.3189, Florida Statutes, is amended
 422 to read:

423 112.3189 Investigative procedures upon receipt of
 424 whistleblower ~~whistle-blower~~ information from certain state
 425 employees and state agency independent contractor employees.-

426 (1) This section only applies to the disclosure of
 427 information as described in s. 112.3187(5) by an employee or
 428 former employee of, or an applicant for employment with, a state
 429 agency, as the term "state agency" is defined in s.
 430 112.3187(3)(j), or by an employee or a former employee of a
 431 state agency's independent contractor ~~216.011~~, to the ~~Office of~~
 432 ~~the~~ Chief Inspector General ~~of the Executive Office of the~~
 433 ~~Governor~~ or to the agency inspector general. If an agency does
 434 not have an inspector general, the head of the state agency, as
 435 defined in s. 112.3187(3)(j) ~~216.011~~, shall designate an
 436 employee, in consultation with the Chief Inspector General, who
 437 meets the requirements provided in s. 20.055(4) to receive
 438 information described in s. 112.3187(5). For purposes of this
 439 section and s. 112.3188 only, the employee designated by the
 440 head of the state agency shall be deemed an agency inspector
 441 general.

442 (2) To facilitate the receipt of information described in

443 subsection (1), the Chief Inspector General shall periodically
444 ~~maintain an in-state toll-free whistleblower's hotline and~~
445 ~~shall~~ circulate among the various state agencies an advisory for
446 all employees which indicates how to file a whistleblower
447 complaint ~~the existence of the toll-free number and its purpose~~
448 ~~and provides an address to which written whistleblower~~
449 ~~information may be forwarded.~~

450 (3) When a person alleges information described in s.
451 112.3187(5), the Chief Inspector General or agency inspector
452 general actually receiving such information shall within 20 days
453 of receiving such information determine:

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

456 (b) Whether the source of the information is a person who
457 is an employee or former employee of, or an applicant for
458 employment with, a state agency, as defined in s.
459 112.3187(3)(j), or an employee or former employee of a state
460 agency's independent contractor ~~216.011~~.

461 (c) Whether the information actually disclosed
462 demonstrates reasonable cause to suspect that an employee or
463 agent of an agency or independent contractor has violated any
464 federal, state, or local law, rule, or regulation, thereby
465 creating and presenting a substantial and specific danger to the
466 public's health, safety, or welfare, or has committed an act of
467 gross mismanagement, gross misconduct, gross malfeasance, gross
468 misfeasance, gross waste of public funds, Medicaid fraud or

469 program abuse, gross neglect of duty on the part of an agency,
470 public officer, or employee ~~or gross neglect of duty.~~

471 (4) If the Chief Inspector General or agency inspector
472 general under subsection (3) determines that the information
473 disclosed is not the type of information described in s.
474 112.3187(5), or that the source of the information is not a
475 person who is an employee or former employee of, or an applicant
476 for employment with, a state agency, as defined in s.
477 112.3187(3)(j), or an employee or former employee of a state
478 agency's independent contractor ~~216.011~~, or that the information
479 disclosed does not demonstrate reasonable cause to suspect that
480 an employee or agent of an agency or independent contractor has
481 violated any federal, state, or local law, rule, or regulation,
482 thereby creating and presenting a substantial and specific
483 danger to the public's health, safety, or welfare, or has
484 committed an act of gross mismanagement, gross misconduct, gross
485 malfeasance, gross misfeasance, gross waste of public funds,
486 Medicaid fraud or program abuse, or gross neglect of duty on the
487 part of an agency, public officer, or employee, the Chief
488 Inspector General or agency inspector general shall notify the
489 complainant of such fact and copy and return, upon request of
490 the complainant, any documents and other materials that were
491 provided by the complainant.

492 (5)~~(a)~~ If the Chief Inspector General or agency inspector
493 general under subsection (3) determines that the information
494 disclosed is the type of information described in s.

495 112.3187(5), that the source of the information is from a person
 496 who is an employee or former employee of, or an applicant for
 497 employment with, a state agency, as defined in s.

498 112.3187(3)(j), or an employee or a former employee of a state
 499 agency's independent contractor ~~216.011~~, and that the
 500 information disclosed demonstrates reasonable cause to suspect
 501 that an employee or agent of an agency or independent contractor
 502 has violated any federal, state, or local law, rule, or
 503 regulation, thereby creating a substantial and specific danger
 504 to the public's health, safety, or welfare, or has committed an
 505 act of gross mismanagement, gross misconduct, gross malfeasance,
 506 gross misfeasance, gross waste of public funds, Medicaid fraud
 507 or program abuse, or gross neglect of duty on the part of an
 508 agency, public officer, or employee, the Chief Inspector General
 509 or agency inspector general making such determination shall then
 510 conduct an investigation, unless the Chief Inspector General or
 511 the agency inspector general determines, within 30 days after
 512 receiving the allegations from the complainant, that such
 513 investigation is unnecessary. For purposes of this subsection,
 514 the Chief Inspector General or the agency inspector general
 515 shall consider the following factors, but is not limited to only
 516 the following factors, when deciding whether the investigation
 517 is not necessary:

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

520 (b)2- The potential for an investigation to yield

521 recommendations that will make state government more efficient
522 and effective.

523 (c)3. The benefit to state government to have a final
524 report on the disclosed information.

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

528 (e)5. Whether another agency may be conducting an
529 investigation and whether any investigation under this section
530 could be duplicative.

531 (f)6. The time that has elapsed between the alleged event
532 and the disclosure of the information.

533 ~~(b) If the Chief Inspector General or agency inspector
534 general determines under paragraph (a) that an investigation is
535 not necessary, the Chief Inspector General or agency inspector
536 general making such determination shall:~~

537 ~~1. Copy and return, upon request of the complainant, any
538 documents and other materials provided by the individual who
539 made the disclosure.~~

540 ~~2. Inform in writing the head of the state agency for the
541 agency inspector general making the determination that the
542 investigation is not necessary and the individual who made the
543 disclosure of the specific reasons why an investigation is not
544 necessary and why the disclosure will not be further acted on
545 under this section.~~

546 (6) The agency inspector general may conduct an

547 investigation pursuant to subsection (5) ~~paragraph (5)(a)~~ only
 548 if the person transmitting information to the agency inspector
 549 general is an employee or a former employee of, or an applicant
 550 for employment with, the agency inspector general's agency, or
 551 is an employee or a former employee of a state agency's
 552 independent contractor. The agency inspector general shall:

553 (a) Conduct an investigation with respect to the
 554 information and any related matters.

555 (b) Submit to the complainant and the Chief Inspector
 556 General, within 90 ~~60~~ days after the date on which a
 557 determination to conduct an investigation is made under
 558 subsection (5) ~~paragraph (5)(a)~~, a final written report that
 559 sets forth the agency inspector general's findings, conclusions,
 560 and recommendations, except as provided under subsection (11).
 561 The complainant shall be advised in writing by the agency
 562 inspector general ~~head~~ that the complainant may submit to the
 563 Chief Inspector General and agency inspector general comments on
 564 the final report within 10 ~~20~~ days of the date of the report and
 565 that such comments will be attached to the final report.

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

569 (a) Promptly transmit to the appropriate ~~head of the state~~
 570 agency inspector general the information with respect to which
 571 the determination to conduct an investigation was made, and such
 572 agency inspector general ~~head~~ shall conduct an investigation and

573 submit to the Chief Inspector General a final written report
574 that sets forth the agency inspector general's ~~head's~~ findings,
575 conclusions, and recommendations; or

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

578 2. Submit to the complainant within 90 ~~60~~ days after the
579 date on which a determination to conduct an investigation is
580 made under subsection (5) ~~paragraph (5)(a)~~, a final written
581 report that sets forth the Chief Inspector General's findings,
582 conclusions, and recommendations, except as provided under
583 subsection (11). The complainant shall be advised in writing by
584 the Chief Inspector General that the complainant may submit to
585 the Chief Inspector General comments on the final report within
586 10 ~~20~~ days of the date of the report and that such comments will
587 be attached to the final report.

588 (c) The Chief Inspector General may require an agency head
589 to conduct an investigation under paragraph (a) only if the
590 information was transmitted to the Chief Inspector General by:

591 1. An employee or a former employee of, or an applicant
592 for employment with, the agency, or an employee or a former
593 employee of a state agency's independent contractor, that the
594 information concerns; or

595 2. An employee who obtained the information in connection
596 with the performance of the employee's duties and
597 responsibilities.

598 (8) Final reports required under this section must be

599 reviewed and signed by the person responsible for conducting the
 600 investigation (agency inspector general, employee designated as
 601 agency inspector general under s. 112.3189(1), agency head, or
 602 Chief Inspector General) and must include:

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

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

606 (c) A summary of any evidence obtained from the
 607 investigation.

608 (d) A listing of any violation or apparent violation of
 609 any law, rule, or regulation.

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

612 1. A change in an agency rule, regulation, or practice.

613 2. The restoration of an aggrieved employee.

614 3. A disciplinary action against an employee.

615 4. The referral to the Department of Law Enforcement of
 616 any evidence of a criminal violation.

617 (9)(a) A report required of the agency head under
 618 paragraph (7)(a) shall be submitted to the Chief Inspector
 619 General and the complainant within 90 ~~60~~ days after the agency
 620 head receives the complaint from the Chief Inspector General,
 621 except as provided under subsection (11). The complainant shall
 622 be advised in writing by the agency head that the complainant
 623 may submit to the Chief Inspector General comments on the report
 624 within 10 ~~20~~ days of the date of the report and that such

625 | comments will be attached to the final report.

626 | (b) Upon receiving a final report required under this
 627 | section, the Chief Inspector General shall review the report and
 628 | determine whether the report contains the information required
 629 | by subsection (8). If the report does not contain the
 630 | information required by subsection (8), the Chief Inspector
 631 | General shall determine why and note the reasons on an addendum
 632 | to the final report.

633 | (c) The Chief Inspector General shall transmit any final
 634 | report under this section, any comments provided by the
 635 | complainant, and any appropriate comments or recommendations by
 636 | the Chief Inspector General to the Governor, the Legislative
 637 | Auditing Committee, the investigating agency, and the Chief
 638 | Financial Officer.

639 | (d) If the Chief Inspector General does not receive the
 640 | report of the agency head within the time prescribed in
 641 | paragraph (a), the Chief Inspector General may conduct the
 642 | investigation in accordance with paragraph (7)(b) or request
 643 | that another agency inspector general conduct the investigation
 644 | in accordance with subsection (6) and shall report the complaint
 645 | to the Governor, to the Joint Legislative Auditing Committee,
 646 | and to the investigating agency, together with a statement
 647 | noting the failure of the agency head to file the required
 648 | report.

649 | (10) For any time period set forth in subsections (3),
 650 | (6), (7), and (9), such time period may be extended in writing

651 by the Chief Inspector General for good cause shown.

652 (11) If an investigation under this section produces
653 evidence of a criminal violation, the report shall not be
654 transmitted to the complainant, and the agency head or agency
655 inspector general shall notify the Chief Inspector General and
656 the Department of Law Enforcement.

657 Section 6. Section 112.31895, Florida Statutes, is amended
658 to read:

659 112.31895 Investigative procedures in response to
660 retaliatory prohibited personnel actions.—

661 (1) COMPLAINT PROCEDURES.—

662 (a) If a disclosure or other protected activity under s.
663 112.3187 includes or results in alleged retaliatory action
664 ~~retaliation~~ by an employer, the employee or former employee of,
665 or applicant for employment with, a state agency, as defined in
666 s. 112.3187(3)(j), or the employee or former employee of a state
667 agency's independent contractor 216.011, that is so affected may
668 file a complaint alleging a retaliatory prohibited personnel
669 action, which complaint must be made by filing a written and
670 signed complaint with the Office of the Chief Inspector General
671 in the Executive Office of the Governor or the Florida
672 Commission on Human Relations, no later than 90 ~~60~~ days after
673 the retaliatory prohibited personnel action.

674 (b) Within 5 ~~three~~ working days after receiving a
675 complaint under this section, the office or officer receiving
676 the complaint shall acknowledge receipt of the complaint and

677 provide copies of the complaint and any other preliminary
678 information available concerning the disclosure of information
679 under s. 112.3187 to each of the other parties named in
680 paragraph (a) and to the agency, ~~which parties shall each~~
681 ~~acknowledge receipt of such copies to the complainant.~~

682 ~~(2)(3) POWERS OF THE FLORIDA COMMISSION ON HUMAN RELATIONS~~
683 ~~CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.-~~

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

687 1. Receive and investigate complaints from employees or
688 former employees alleging retaliation by state agencies, as the
689 term "state agency" is defined in s. 112.3187(3)(j), and of
690 state agency independent contractors ~~216.011.~~

691 2. Protect employees and applicants for employment with
692 such agencies from retaliatory actions ~~prohibited personnel~~
693 ~~practices~~ under s. 112.3187.

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

696 4. Recommend disciplinary proceedings pursuant to
697 investigation and appropriate agency rules and procedures.

698 5. Coordinate with the Chief Inspector General in the
699 Executive Office of the Governor and the Florida Commission on
700 Human Relations to receive, review, and forward to appropriate
701 agencies, legislative entities, or the Department of Law
702 Enforcement disclosures of a violation of any law, rule, or

703 regulation, or disclosures of gross mismanagement; gross~~7~~
704 malfeasance; gross~~7~~ misfeasance; gross misconduct; gross waste
705 of public funds; Medicaid fraud or program abuse; gross~~7~~
706 ~~nonfeasance~~, neglect of duty on the part of an agency, public
707 officer, or employee; fraud; waste; abuse of authority;~~7~~ or a
708 substantial or specific danger to the health, welfare, or safety
709 of the public ~~gross waste of public funds.~~

710 6. Review rules pertaining to personnel matters issued or
711 proposed by the Department of Management Services, the Public
712 Employees Relations Commission, and other agencies, and, if the
713 Florida Commission on Human Relations finds that any rule or
714 proposed rule, on its face or as implemented, requires the
715 commission of a an alleged retaliatory action ~~prohibited~~
716 ~~personnel practice~~, provide a written comment to the appropriate
717 agency.

718 7. Investigate, request assistance from other governmental
719 entities, and, if appropriate, bring actions concerning,
720 allegations of retaliation by state agencies under subparagraph
721 1.

722 8. Administer oaths, examine witnesses, take statements,
723 issue subpoenas, order the taking of depositions, order
724 responses to written interrogatories, and make appropriate
725 motions to limit discovery, pursuant to investigations under
726 subparagraph 1.

727 9. Intervene or otherwise participate, as a matter of
728 right, in any appeal or other proceeding arising under this

729 section before the Public Employees Relations Commission or any
730 other appropriate agency, except that the Florida Commission on
731 Human Relations must comply with the rules of the commission or
732 other agency and may not seek corrective action or intervene in
733 an appeal or other proceeding without the consent of the person
734 protected under ss. 112.3187-112.31895.

735 10. Conduct an investigation, ~~in the absence of an~~
736 ~~allegation,~~ to determine whether reasonable grounds exist to
737 believe that a retaliatory ~~prohibited~~ action or a pattern of
738 retaliatory ~~prohibited~~ action has occurred, is occurring, or is
739 to be taken.

740 (b) Within 15 days after receiving a complaint that a
741 person has been discharged from employment allegedly for
742 engaging in ~~disclosing~~ protected activity ~~information~~ under s.
743 112.3187, the Florida Commission on Human Relations shall review
744 the information and determine whether temporary reinstatement is
745 appropriate under s. 112.3187(8)(f) ~~s. 112.3187(9)(f)~~. If the
746 Florida Commission on Human Relations so determines, based upon
747 a legal review of the complaint and accompanying materials, it
748 shall apply for an expedited order to show cause from the
749 appropriate agency or circuit court for the immediate
750 reinstatement of the employee who has been discharged subsequent
751 to the disclosure made under s. 112.3187, pending the issuance
752 of the final order on the complaint.

753 (c) The Florida Commission on Human Relations may request
754 an agency or circuit court to order a stay, on such terms as the

755 court requires, of any personnel action for 45 days if the
756 commission determines that reasonable grounds exist to believe
757 that a retaliatory action has occurred, is occurring, or is to
758 be taken. The commission may request that such stay be extended
759 for appropriate periods of time.

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

763 ~~(d) If the Florida Commission on Human Relations is unable~~
764 ~~to conciliate a complaint within 60 days after receipt of the~~
765 ~~fact-finding report, the Florida Commission on Human Relations~~
766 ~~shall terminate the investigation. Upon termination of any~~
767 ~~investigation, the Florida Commission on Human Relations shall~~
768 ~~notify the complainant and the agency head of the termination of~~
769 ~~the investigation, providing a summary of relevant facts found~~
770 ~~during the investigation and the reasons for terminating the~~
771 ~~investigation. A written statement under this paragraph is~~
772 ~~presumed admissible as evidence in any judicial or~~
773 ~~administrative proceeding but is not admissible without the~~
774 ~~consent of the complainant.~~

775 ~~(e)1. The Florida Commission on Human Relations may~~
776 ~~request an agency or circuit court to order a stay, on such~~
777 ~~terms as the court requires, of any personnel action for 45 days~~
778 ~~if the Florida Commission on Human Relations determines that~~
779 ~~reasonable grounds exist to believe that a prohibited personnel~~
780 ~~action has occurred, is occurring, or is to be taken. The~~

781 ~~Florida Commission on Human Relations may request that such stay~~
782 ~~be extended for appropriate periods of time.~~

783 (d)2. If, in connection with any investigation under this
784 section, it is determined ~~the Florida Commission on Human~~
785 ~~Relations determines~~ that reasonable grounds exist to believe
786 that a criminal violation has occurred which has not previously
787 been reported ~~prohibited action has occurred, is occurring, or~~
788 ~~is to be taken which requires corrective action,~~ the Florida
789 Commission on Human Relations shall report the determination
790 ~~together with any findings or recommendations to the agency head~~
791 ~~and may report that determination and those findings and~~
792 ~~recommendations to the~~ Chief Inspector General and the
793 Department of Law Enforcement ~~Governor and the Chief Financial~~
794 ~~Officer. The Florida Commission on Human Relations may include~~
795 ~~in the report recommendations for corrective action to be taken.~~

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

801 ~~4. If the Florida Commission on Human Relations finds, in~~
802 ~~consultation with the individual subject to the prohibited~~
803 ~~action, that the agency has implemented the corrective action,~~
804 ~~the commission shall file such finding with the agency head,~~
805 ~~together with any written comments that the individual provides,~~
806 ~~and terminate the investigation.~~

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

811 ~~(g)1. If, in connection with any investigation under this~~
 812 ~~section, it is determined that reasonable grounds exist to~~
 813 ~~believe that a criminal violation has occurred which has not~~
 814 ~~been previously reported, the Florida Commission on Human~~
 815 ~~Relations shall report this determination to the Department of~~
 816 ~~Law Enforcement and to the state attorney having jurisdiction~~
 817 ~~over the matter.~~

818 (e)2. If an alleged criminal violation has been reported,
 819 the Florida Commission on Human Relations shall confer with the
 820 Department of Law Enforcement and the state attorney before
 821 proceeding with the investigation of the retaliatory ~~prohibited~~
 822 ~~personnel~~ action and may defer the investigation pending
 823 completion of the criminal investigation and proceedings. The
 824 Florida Commission on Human Relations shall inform the
 825 complainant of the decision to defer the investigation and, if
 826 appropriate, of the confidentiality of the investigation.

827 (f)(h) If, in connection with any investigation under this
 828 section, the Florida Commission on Human Relations determines
 829 that reasonable grounds exist to believe that a violation of a
 830 law, rule, or regulation has occurred, other than a criminal
 831 violation or a retaliatory ~~prohibited~~ action under this section,
 832 the commission may report such violation to the head of the

833 agency involved. Within 30 days after the agency receives the
 834 report, the agency head shall provide to the commission a
 835 certification that states that the head of the agency has
 836 personally reviewed the report and indicates what action has
 837 been or is to be taken and when the action will be completed.

838 (g)~~(i)~~ During any investigation under this section,
 839 disciplinary action may not be taken against any employee of a
 840 state agency, as the term "state agency" is defined in s.
 841 112.3187(3)(j) ~~216.011~~, for reporting an alleged retaliatory
 842 ~~prohibited~~ personnel action that is under investigation, or for
 843 reporting any related activity, or against any employee for
 844 participating in an investigation ~~without notifying the Florida~~
 845 ~~Commission on Human Relations.~~

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

851 (3)~~(2)~~ FACT FINDING.—The Florida Commission on Human
 852 Relations shall:

853 (a) Upon receipt of an ~~Receive any~~ allegation of a
 854 retaliatory ~~personnel~~ action prohibited by s. 112.3187,
 855 including a proposed or potential action, ~~and~~ conduct an
 856 investigation ~~informal fact finding regarding any allegation~~
 857 ~~under this section, to the extent necessary to determine whether~~
 858 there are reasonable grounds to believe that a retaliatory

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859 ~~prohibited~~ personnel action under s. 112.3187 has occurred, is
860 occurring, or is to be taken.

861 ~~(b) Notify the complainant, within 15 days after receiving~~
862 ~~a complaint, that the complaint has been received by the~~
863 ~~department.~~

864 (b)(e) Within 120 90 days after receiving the complaint is
865 filed, determine whether reasonable grounds exist to believe
866 that a retaliatory action occurred, is occurring, or is to be
867 taken provide the agency head and the complainant with a fact-
868 finding report that may include recommendations to the parties
869 or proposed resolution of the complaint. The fact-finding report
870 shall be presumed admissible in any subsequent or related
871 administrative or judicial review.

872 (4) NOTICE OF TERMINATION.-

873 (a) If the commission determines that reasonable grounds
874 do not exist to believe that a retaliatory action occurred, is
875 occurring, or is to be taken, the commission shall issue a
876 termination of investigation for no cause, which must provide
877 the reasons for terminating the investigation to the state
878 agency and to the complainant.

879 (b)1. If the commission determines that reasonable grounds
880 exist to believe that a retaliatory action occurred, is
881 occurring, or is to be taken, the commission must issue a fact-
882 finding report which may include recommendations to the parties
883 or propose a resolution of the complaint. The commission has 60
884 days after the date of the report to attempt to resolve the

885 complaint. If the complaint remains unresolved upon expiration
886 of the 60-day period, the commission must issue a notice of
887 termination of investigation with cause which must provide to
888 the affected parties a summary of relevant facts found during
889 the investigation and the reasons for terminating the
890 investigation.

891 2. A fact-finding report issued under this paragraph is
892 presumed admissible in evidence in any subsequent judicial or
893 administrative proceeding.

894 (c) Upon receipt of the notice of termination of
895 investigation, a complainant may:

896 1. Bring a civil action in any court of competent
897 jurisdiction within 180 days after rendition of the notice; or

898 2. At least 60 days after rendition of the notice, file a
899 complaint with the Public Employees Relations Commission against
900 the employer-agency regarding the alleged retaliatory action.

901 The Public Employees Relations Commission has jurisdiction over
902 such complaints under ss. 112.3187 and 447.503(4) and (5).
903 Judicial review of any final order of the Public Employees
904 Relations Commission shall be as provided in s. 120.68.

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

907 ~~(4) RIGHT TO APPEAL.~~

908 ~~(a) Not more than 60 days after receipt of a notice of~~
909 ~~termination of the investigation from the Florida Commission on~~
910 ~~Human Relations, the complainant may file, with the Public~~

911 ~~Employees Relations Commission, a complaint against the~~
 912 ~~employer agency regarding the alleged prohibited personnel~~
 913 ~~action. The Public Employees Relations Commission shall have~~
 914 ~~jurisdiction over such complaints under ss. 112.3187 and~~
 915 ~~447.503(4) and (5).~~

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

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

920 112.31901 Investigatory records.—

921 (3) This section does not apply to whistleblower ~~whistle-~~
 922 ~~blower~~ investigations conducted pursuant to ss. 112.3187,
 923 112.3188, 112.3189, and 112.31895.

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

926 760.06 Powers of the commission.—Within the limitations
 927 provided by law, the commission shall have the following powers:

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

931 Section 9. This act shall take effect July 1, 2016.