

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1047 Government Integrity  
**SPONSOR(S):** Public Integrity & Ethics Committee, Tomkow  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1542

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Public Integrity & Ethics Committee	16 Y, 0 N, As CS	Kiner	Rubottom
2) Appropriations Committee	30 Y, 0 N	Delaney	Pridgeon
3) State Affairs Committee			

### SUMMARY ANALYSIS

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

- Creates the Florida Integrity Office under the Auditor General for the purpose of ensuring accountability and integrity in state and local government and facilitating the elimination of fraud, waste, abuse, gross mismanagement, and misconduct in government.
- Requires the Chief Inspector General (CIG) and agency inspectors general to determine whether there is reasonable probability that fraud, waste, abuse, gross 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, gross mismanagement, or misconduct in government.
- Requires the Chief Financial Officer to regularly forward to the Florida Integrity Officer copies of suggestions and information submitted through the state's 'Get Lean' hotline.
- Provides a financial incentive for agency employees to file 'Whistle-blower's Act' complaints and participate in investigations that lead to the recovery of funds.
- Broadens the competitive solicitation exemption for statewide broadcasting of public service announcements.
- Prohibits state or local tax incentive funds from being used to award or pay a state contractor for services provided or expenditures incurred pursuant to a state contract.
- For agency contracts over \$50,000, requires a contractor to include in the contract a good faith estimate of gross profit for each year of the contract, provides a process for the agency to review such estimate, and provides financial penalties for a contractor who misrepresents the estimate.
- Prohibits a state employee, other than an agency head, from lobbying for an appropriation and also participating in awarding any contract funded by the appropriation.

The bill has a projected annual fiscal impact to the state of approximately \$2.5 million to implement the provisions of the bill related to the creation of the Florida Integrity Office under the Auditor General. The bill authorizes the Auditor General to use carryforward funds to cover projected expenditures. The fiscal impact of other provisions of the bill on other state agencies is indeterminate, but appear to be easily absorbed by agency resources. See Fiscal Comments section.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Florida Integrity Office (Sections 1 and 12)**

###### *Current Situation*

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

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

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

###### *Effect of Proposed Changes*

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

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

If the complaint is supported by sufficient information indicating a reasonable probability of fraud, waste, abuse, gross mismanagement, or misconduct, the bill requires the Florida Integrity Officer to determine whether the matter is under investigation by a law enforcement agency, the Commission on Ethics, the Chief Financial Officer, the Office of the Chief Inspector General, or the applicable agency inspector general. If such an investigation has been initiated, the Florida Integrity Officer must notify the

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<sup>1</sup> Section 11.42(2), F.S.

<sup>2</sup> Section 11.42(5), F.S.

<sup>3</sup> Section 11.143(2), F.S.

<sup>4</sup> Section 11.143(3)(a), F.S.

complainant in writing, and the complaint may be closed. If such an investigation has not been initiated, the bill requires the Florida Integrity Officer to conduct an investigation and issue a report of the investigative findings to the President of the Senate and the Speaker of the House. The Florida Integrity Officer may also refer the matter to the Auditor General, the appropriate law enforcement agency, the Commission on Ethics, the Chief Financial Officer, the Office of the Chief Inspector General, or the applicable agency inspector general.

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

The bill also authorizes the Florida Integrity Officer to request the Legislative Auditing Committee or any standing committee to exercise existing powers<sup>6</sup> to issue subpoenas and subpoenas duces tecum to compel testimony or the production of evidence when deemed necessary to an authorized investigation. The bill also provides the means of enforcing any subpoena issued pursuant to the bill's provisions.

Beginning with the 2020-2021 fiscal year, the bill requires the Auditor General and Florida Integrity Officer to, within available resources, randomly select and review appropriations projects appropriated in the prior fiscal year and, if appropriate, investigate and recommend an audit of such project. The bill requires that, at a minimum, the investigation or audit must include an evaluation of whether the recipient of the appropriations project administered the project in an efficient and effective manner. Pursuant to the bill, the term, 'appropriations project' means a specific appropriation or proviso providing funding for a specified entity that is a local government, private entity, or privately-operated program that is named or described. The term does not include an appropriation:

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

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

Beginning with the 2020-2021 fiscal year, the bill requires the Auditor General and the Florida Integrity Officer, within available resources, to select and review, audit, or investigate the financial activities of:

- Political subdivisions, special districts, public authorities, public hospitals, state and local councils or commissions, units of local government, or public education entities in the state; and
- Any authorities, councils, commissions, direct-support organizations, institutions, foundations, or similar entities created by law or ordinance to pursue a public purpose, entitled by law or

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<sup>5</sup> See Section 11.143(2), F.S.

<sup>6</sup> See Section 11.143(3), F.S.

ordinance to any distribution of tax or fee revenues, or organized for the sole purpose of supporting one of the public entities listed above.

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

## **Auditor General Responsibilities (Section 2)**

### *Current Situation*

The United States Government Accountability Office is “an independent, nonpartisan agency that works for Congress. Often called the ‘congressional watchdog,’ the GAO examines how taxpayer dollars are spent and provides Congress and federal agencies with objective, reliable information to help the government save money and work more efficiently.”<sup>7</sup> The GAO’s ‘Standards for Internal Control in the Federal Government’ (Green Book) provides “a framework for establishing and maintaining an effective internal control system” within federal government agencies.<sup>8</sup> Among other things, the Green Book provides standard definitions for ‘fraud,’ ‘waste,’ and ‘abuse.’<sup>9</sup>

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

Current law requires the Auditor General to conduct operational audits<sup>11</sup> on state agencies, state universities, state colleges, district school boards, the Florida Clerks of Court Operations Corporation, water management districts, and the Florida School for the Deaf and the Blind at least every three years.<sup>12</sup> Current law also requires the Auditor General to conduct a financial audit<sup>13</sup> on all state universities and state colleges on an annual basis.<sup>14</sup> The Auditor General is required to perform a financial audit on district school boards in counties that have populations of 150,000 or more at least once every three years and annually in counties with populations of fewer than 150,000.<sup>15</sup>

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

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

<sup>8</sup> See GAO, *Standards for Internal Control in the Federal Government* (September 2014).

<sup>9</sup> *Id* at pg. 40.

<sup>10</sup> Rule 60L-36.005(1), F.A.C.

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

<sup>12</sup> Section 11.45(2)(f), F.S.

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

<sup>14</sup> Section 11.45(2)(c), F.S.

<sup>15</sup> Section 11.45(2)(d), (e), F.S.

that require the audited organization to demonstrate the steps it has taken towards corrective action.<sup>16</sup> This reporting cycle may result in the Legislative Auditing Committee not being notified of one of the above referenced entity's failure to take full corrective action for six or more years.

### *Effect of Proposed Changes*

The bill codifies definitions for 'fraud,'<sup>17</sup> 'waste,'<sup>18</sup> 'abuse,'<sup>19</sup> and 'misconduct.'<sup>20</sup> The definitions for 'fraud,' 'waste,' and 'abuse' mirror the definitions used by GAO, as provided in the Green Book. The definition for "misconduct" mirrors the definition promulgated by DMS in Rule 60L-36.005, F.A.C.

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

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

## **Inspectors General (Sections 3 and 6)**

### *Current Situation*

The Office of Chief Inspector General (CIG) is responsible for promoting accountability, integrity, and efficiency in agencies under the Governor's jurisdiction.<sup>21</sup> The CIG monitors the activities of the agency inspectors general under the Governor's jurisdiction and is required to do the following:

- Initiate, supervise, and coordinate investigations, recommend policies, and carry out other activities designed to deter, detect, prevent, and eradicate fraud, waste, abuse, mismanagement, and misconduct in government;
- Investigate, upon receipt of a complaint or for cause, any administrative action of any agency the administration of which is under the direct supervision of the Governor;
- Request such assistance and information as may be necessary for the performance of the CIG's duties;
- Examine the records and reports of any agency the administration of which is under the direct supervision of the Governor;
- Coordinate complaint-handling activities with agencies;
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline to receive complaints and information concerning the possible violation of law or administrative rules, mismanagement, fraud, waste, abuse of authority, malfeasance, or a substantial or specific danger to the health, welfare, or safety of the public;
- Report expeditiously to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are recognizable

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<sup>16</sup> Section 11.45(7)(j), F.S.

<sup>17</sup> The bill defines the term 'fraud' to mean "obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an organization's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an organization's resources."

<sup>18</sup> The bill defines the term 'waste' to mean "the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose."

<sup>19</sup> The bill defines the term 'abuse' to mean "behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances." The term includes the misuse of authority or position for personal gain.

<sup>20</sup> The bill defines the term 'misconduct' to mean "conduct which, though not illegal, is inappropriate for a person in his or her specified position."

<sup>21</sup> Section 14.32(1), F.S.

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.<sup>22</sup>

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency<sup>23</sup> 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,<sup>24</sup> 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.<sup>25</sup>

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

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<sup>22</sup> Section 14.32(2), F.S.

<sup>23</sup> Section 20.055(1)(d), F.S., defines the term 'state agency' as each department created pursuant to ch. 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, the Office of Early Learning, and the state courts system.

<sup>24</sup> Section 20.055(1)(a), F.S., defines the term 'agency head' as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.

<sup>25</sup> Section 20.055(2), F.S.

misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate;
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law;
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include 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.<sup>26</sup>

### *Effect of Proposed Changes*

The bill requires the CIG and agency inspectors general to make a reasonable probability determination within six months of initiating an investigation of fraud, waste, abuse, gross 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, gross mismanagement, or misconduct has occurred, the CIG or any agency inspector general must make a new determination every three months until the investigation is closed or reasonable probability is found. The bill provides definitions for the terms 'fraud,'<sup>27</sup> 'waste,'<sup>28</sup> 'abuse,'<sup>29</sup> and 'misconduct.'<sup>30</sup> The definitions for 'fraud,' 'waste,' and 'abuse' mirror the definitions used by GAO, as provided in the Green Book. The definition for "misconduct" mirrors the definition promulgated by DMS in Rule 60L-36.005, F.A.C.

If the CIG or an agency inspector general determines that there is reasonable probability to believe a public official, independent contractor, or agency has committed fraud, waste, abuse, gross mismanagement, or misconduct in government, the bill requires the applicable inspector general to report such findings to the Florida Integrity Officer and to the Commission on Ethics, the Office of Fiscal Integrity within the Chief Financial Officer's (CFO's) office, or proper law enforcement agency if such entity has jurisdiction over the subject matter. Pursuant to the bill, such public officer, independent contractor, or agency employee responsible for the fraud, waste, abuse, gross mismanagement, or misconduct in government is liable for repayment of the funds diverted or lost. If the person liable fails

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<sup>26</sup> Section 20.055(7), F.S.

<sup>27</sup> The bill defines the term 'fraud' to mean "obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an organization's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an organization's resources."

<sup>28</sup> The bill defines the term 'waste' to mean "the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose."

<sup>29</sup> The bill defines the term 'abuse' to mean "behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances." The term includes the misuse of authority or position for personal gain.

<sup>30</sup> The bill defines the term 'misconduct' to mean "conduct which, though not illegal, is inappropriate for a person in his or her specified position."

to repay such funds voluntarily and the state does not agree to a settlement, the bill requires the CFO to bring a civil action to recover the funds.

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

##### *Current Situation*

The CFO is an elected constitutional Cabinet member.<sup>31</sup> 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.<sup>32</sup> Such responsibilities include, but are not limited to, auditing and adjusting accounts of officers and those indebted to the state,<sup>33</sup> paying state employee salaries,<sup>34</sup> and reporting all disbursements of funds administered by the CFO.<sup>35</sup>

The CFO's Office of Fiscal Integrity's (OFI) mission is to detect and investigate the misappropriation or misuse of state assets in a manner that safeguards the interests of the state and its taxpayers. OFI is a criminal justice agency<sup>36</sup> with full statutory subpoena power.<sup>37</sup>

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

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

##### *Effect of Proposed Changes*

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

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

##### *Current Situation*

Florida law requires the CFO to operate a 24-hour statewide toll-free hotline to receive information or suggestions from state residents on how to improve the operation of government, increase governmental efficiency, and eliminate waste in government.<sup>38</sup> The hotline consists of a telephone hotline and website. The CFO is required to advertise the hotline by posting notices in conspicuous places in state agency offices, city halls, county courthouses, and places in which there is exposure to significant numbers of the general public, including, but not limited to, local convenience stores, shopping malls, shopping centers, gas stations, or restaurants.<sup>39</sup> Additionally, the law allows the CFO to

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<sup>31</sup> FLA. CONST. art. IV, s. 4,

<sup>32</sup> FLA. CONST. art. IV, s. 4(c); s. 17.001, F.S.

<sup>33</sup> Section 17.04, F.S.

<sup>34</sup> Section 17.09, F.S.

<sup>35</sup> Section 17.11, F.S.

<sup>36</sup> Section 20.121(2)(e), F.S.

<sup>37</sup> Section 17.05(2), F.S.

<sup>38</sup> Section 17.325(1), F.S.

<sup>39</sup> Section 17.325(2), F.S.

advertise the availability of the hotline in newspapers of general circulation within the state.<sup>40</sup> When advertising the hotline, the CFO is required to use the slogan, "Tell us where we can 'Get Lean.'"<sup>41</sup>

Those that provide tips through the hotline may remain anonymous, but if the tipper provides his or her name, the name is kept confidential.<sup>42</sup> 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.<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup>

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.<sup>46</sup> If forwarded a suggestion or information from the CFO's office, the impacted agency is required to conduct a preliminary evaluation of the efficacy of the suggestion or information and provide the CFO's office with a preliminary determination of the amount of revenue the state might save by implementing the suggestion or making use of the information.<sup>47</sup>

Based on information provided by the CFO's office, from January 1, 2016, through September 30, 2017, there were 108 suggestions or items of information received through the hotline. Of these, 66 were processed.

#### *Effect of Proposed Changes*

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

### **Savings Sharing Program (Section 7)**

#### *Current Situation*

Florida law provides a state 'Savings Sharing Program' for the purpose of providing a process by which state agencies can retain a portion of their budget for implementing internally generated program efficiencies and cost reductions and then redirect the savings to employees. By law, DMS is required to adopt rules that prescribe procedures for the program.<sup>48</sup>

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.<sup>49</sup> All employees within the Career Service and Selected Exempt Service are eligible to receive awards, provided they meet the statutory eligibility criteria.<sup>50</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Section 17.325(4), F.S.

<sup>44</sup> Section 17.325(3), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Section 110.1245(1)(a), F.S.

<sup>49</sup> Section 110.1245(1)(b), (c), F.S.

<sup>50</sup> Section 110.1245(1)(c) and (2)(b), F.S.

Additionally, the law allows the Chief Justice to establish a savings sharing program for comparable employees in the judicial branch.<sup>51</sup>

Each proposed award and amount of money must be approved by the Legislative Budget Commission before distribution.<sup>52</sup>

### *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 recovered, the employee's employment classification, and when more than one employee makes a relevant report, in proportion to each employee's contribution to the investigation that led to the recovery of such funds. The bill sets the following award amounts:

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

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

### **Commission on Ethics Complaints (Section 8)**

#### *Current Situation*

The Commission on Ethics (Commission) receives complaints and referrals of alleged ethics violations. Upon receipt of a written, signed complaint (on a form prescribed by the Commission), the Commission will conduct a probable cause determination, and if necessary, a more thorough investigation of the alleged violation.<sup>53</sup> The Commission will also conduct a probable cause determination, and if necessary, a more thorough investigation when it receives a written referral from the Governor, the Department of Law Enforcement, a state attorney, or a United States Attorney – provided at least six Commissioners determine the referral is sufficient to indicate a violation of this part or any other breach of the public trust.<sup>54</sup>

#### *Effect of Proposed Changes*

The bill adds to the list of officials and entities from which the Commission may receive a referral. Specifically, the bill authorizes the Commission to receive a referral from the Chief Inspector General or an agency inspector general.

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<sup>51</sup> *Id.*

<sup>52</sup> Section 110.1245(1)(b), F.S.

<sup>53</sup> Section 112.324(1)(a), F.S.

<sup>54</sup> Section 112.324(1)(b), F.S.

## Procurement of Commodities and Services (Section 9)

### *Current Situation*

Chapter 287, F.S., regulates state agency<sup>55</sup> 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.<sup>56</sup> DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.<sup>57</sup>

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:<sup>58</sup>

- 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;
- Invitations to negotiate – used when the agency intends to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value; and
- Single source contracts – used when the agency determines that only one vendor is available to provide a commodity or service at the time of purchase.

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process;<sup>59</sup> however, certain contractual services and commodities are exempt from this requirement,<sup>60</sup> or state or federal law may prescribe with whom the agency must contract,<sup>61</sup> or the rate of payment or the recipient of the fund may be established during the appropriations process.<sup>62</sup>

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.<sup>63</sup>

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<sup>55</sup> Section 287.012(1), F.S., defines the term 'agency' as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. The term 'agency' does not include the university and college boards of trustees or the state universities and colleges."

<sup>56</sup> See ss. 287.032 and 287.042, F.S.

<sup>57</sup> *Id.*

<sup>58</sup> See ss. 287.012(6) and 287.057, F.S.

<sup>59</sup> Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

<sup>60</sup> See s. 287.057(3), F.S.

<sup>61</sup> See s. 287.057(10), F.S.

<sup>62</sup> *Id.*

<sup>63</sup> See s. 287.057(3)(e)13., F.S.

### *Effect of Proposed Changes*

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

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

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

For these contracts in excess of \$50,000, the bill requires the contractor to include a good faith estimate of gross profit<sup>64</sup> for each year of the contract. If the contractor includes the cost of products or services expected to be provided by a participant<sup>65</sup> closely associated with the contractor,<sup>66</sup> the contractor must name the participant, describe the association, and must provide a good faith estimate of gross profit for the participant for each year of the contract. Before awarding the contract, the agency must make a written determination that such estimated gross profit is not excessive and specify the reasons for such determination. If a contractor misrepresents the gross profit estimate, the contractor will be liable to the agency for three times the amount or value of the misrepresentation.

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

The bill also prohibits a state employee from lobbying for funding for a contract and also participating in the awarding of such contract. This provision of the bill does not apply to an agency head.

### **Tax Incentives (Section 10)**

#### *Current Situation*

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

#### *Effect of Proposed Changes*

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

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<sup>64</sup> Pursuant to the bill, the phrase "good faith estimate of gross profit" means a good faith estimate of the total receipts expected under the contract less the cost of providing contracted commodities and services under the contract, not including overhead costs. "Overhead costs" means all costs not directly related to contract performance, including, but not limited to, marketing and administrative expenses.

<sup>65</sup> Pursuant to the bill, the term 'participant' means a person or entity with whom the contractor expects to subcontract for services or commodities in carrying out a contract with an agency.

<sup>66</sup> Pursuant to the bill, the phrase "closely associated with the contractor" means the contractor, a principal of the contractor, or a family member or business associate of a principal of the contractor is a principal of the participant. The term 'principal' means a person who owns at least 5 percent interest in the business or entity or is a manager of the business or entity. The term 'business associate' means a person or entity with whom a principal of the contractor has substantial investment, employment, or partnership interests.

## **Department of Education Inspector General Investigations (Section 11)**

### *Current Situation*

The Department of Education's Office of Inspector General (DOE IG) is responsible for promoting accountability, efficiency, and effectiveness and detecting fraud and abuse within school districts, the Florida School for the Deaf and the Blind, and Florida College System institutions.<sup>67</sup>

If the Commissioner of Education determines that a district school board, the Board of Trustees for the Florida School for the Deaf and the Blind, or a Florida College System institution board of trustees is unwilling or unable to address substantiated allegations made by any person relating to waste, fraud, or financial mismanagement within the school district, the Florida School for the Deaf and the Blind, or the Florida College System institution, the DOE IG is required to conduct, coordinate, or request investigations into such substantiated allegations.<sup>68</sup>

During the 2018 Session, the Legislature passed CS/CS/CS/HB 1279, which among other things, revised the DOE IG's duties to require the DOE IG to investigate allegations or reports of possible fraud or abuse against a district school board made by any member of the Cabinet; the presiding officer of either house of the Legislature; a chair of a substantive or appropriations committee with jurisdiction; or a member of the board for which an investigation is sought. The bill was approved by the Governor<sup>69</sup> and comes effective July 1, 2019.

### *Effect of Proposed Changes*

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

### **Effective Date**

The bill is effective July 1, 2019.

#### **B. SECTION DIRECTORY.**

**Section 1** creates s. 11.421, F.S., to establish a Florida Integrity Office within the Office of Auditor General.

**Section 2** amends s. 11.45, F.S., relating to Auditor General reporting requirements.

**Section 3** amends s. 14.32, F.S., relating to the Office of CIG.

**Section 4** amends s. 17.04, F.S., relating to the Chief Financial Officer's authority to audit and adjust accounts of officers and those indebted to the state.

**Section 5** amends s. 17.325, F.S., relating to Florida's 'Get Lean' hotline established and operated by the Chief Financial Officer.

**Section 6** amends s. 20.055, F.S., relating to agency inspectors general.

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<sup>67</sup> Section 1001.20(4)(e), F.S.

<sup>68</sup> *Id.*

<sup>69</sup> Section 2018-5, L.O.F.

**Section 7** amends s. 110.1245, F.S., relating to the state 'Savings Sharing Program.'

**Section 8** amends s. 112.324, F.S., relating to Commission on Ethics investigations based on receipt of a referral from a specified official or entity.

**Section 9** amends s. 287.057, F.S., relating to the procurement of commodities or contractual services.

**Section 10** creates s. 288.00001, F.S., relating to use of state or local incentive funds to pay for services.

**Section 11** amends ch. 2018-5, L.O.F., relating to duties of the Inspector General of the Department of Education.

**Section 12** provides authority to the Auditor General to use carryforward funds to fund the establishment and operation of the Florida Integrity Office.

**Section 13** provides an effective date of July 1, 2019.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

Staff in the Office of Auditor General projected an annual fiscal impact of approximately \$2.5 million to staff (12 - 14 FTEs) and fund the newly created Florida Integrity Office. Only a portion of that amount would be needed in Fiscal Year 2019-20 as the office ramped up staffing and associated expenses. In addition, some of the functions of the Office are not implemented until Fiscal Year 2020-21. The bill authorizes the Auditor General to use carryforward funds, which are sufficient to cover such costs for more than three years, to fund the office. Therefore no appropriation is necessary.

The revisions to the state 'Savings Sharing Program' will have an indeterminate positive fiscal impact on agencies as they provide an incentive for agency employees to file Whistle-blower's Act complaints and participate in investigations that lead to the recovery of state or federal funds. Any award given

pursuant to this provision will be paid from the specific appropriation or trust fund from which the savings or recovery resulted.

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

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On Thursday, March 21, 2019, the Public Integrity & Ethics Committee adopted a strike-all amendment to the bill and subsequently reported the bill favorably as a committee substitute. The strike-all amendment made the following revisions to the bill:

- Renamed the 'Florida Accountability Office' the 'Florida Integrity Office' and renamed the 'Florida Accountability Officer' the 'Florida Integrity Officer.'
- Modified the Florida Integrity Officer's authority to review certain public records.
- Removed a provision that penalized non-compliance with an audit.
- Added additional protection for whistle-blower employees who receive awards pursuant to the savings sharing program by authorizing an agent, trustee, or custodian to accept any award for which the employee is eligible.
- Authorized the Commission on Ethics to accept a referral of an alleged ethics violation from the Chief Inspector General or an agency inspector general.
- Restored current law standards for gross mismanagement, gross waste, and gross neglect of duty, and as such, removed original bill sections 9, 15, 16, and 17.
- Removed a provision related to the duties of Florida College System institution presidents.
- Removed a provision relating to the payment of legal fees, and required documentary evidence, by a state or local agency.

This analysis is drafted to the committee substitute as passed by the Public Integrity & Ethics Committee.