

By Senator Brandes

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1 A bill to be entitled
2 An act relating to the Whistleblower's Act; amending
3 s. 112.3187, F.S.; revising a short title; revising
4 legislative intent; revising, reordering, and
5 providing definitions; revising the actions that an
6 agency or independent contractor is prohibited from
7 taking against an employee who participates in
8 protected activity or discloses certain information;
9 specifying that whistleblower remedies and protections
10 do not apply to certain persons; revising requirements
11 related to the disclosure of information and methods
12 of reporting the information; revising requirements
13 related to remedies; revising affirmative defenses;
14 amending s. 112.3188, F.S.; authorizing additional
15 persons to disclose confidential and exempt
16 information; providing for construction; conforming
17 cross-references to changes made by the act; amending
18 s. 112.3189, F.S.; revising applicability of
19 provisions relating to investigative procedures upon
20 receipt of whistleblower information; revising powers
21 and responsibilities of the Chief Inspector General
22 and agency inspectors general; revising reporting
23 requirements; reordering and amending s. 112.31895,
24 F.S.; revising investigative procedures in response to
25 retaliatory actions; revising complaint requirements;
26 revising fact-finding responsibilities of the Florida
27 Commission on Human Relations; revising commission
28 powers and responsibilities; providing requirements
29 for the termination of an investigation; amending ss.

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14.32, 20.055, 112.31901, and 760.06, F.S.; conforming provisions and cross-references to changes made by the act; providing an effective date.

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

Section 1. Section 112.3187, Florida Statutes, is amended to read:

112.3187 Retaliatory ~~Adverse~~ action against employee for disclosing information of specified nature prohibited; employee remedy and relief.—

(1) SHORT TITLE.—Sections 112.3187–112.31895 may be cited as the “Florida Public Whistleblower’s ~~Whistle-blower’s~~ Act.”

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

(3) DEFINITIONS.—As used in this act, unless otherwise

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59 specified, the following words or terms shall have the meanings
60 indicated:

61 (a) "Agency" means any state, regional, county, local, or
62 municipal government entity, whether executive, judicial, or
63 legislative; any official, officer, department, division,
64 bureau, commission, authority, or political subdivision therein;
65 the Citizens Property Insurance Corporation; the Florida
66 Commission on Human Relations; or any public school, community
67 college, or state university.

68 (b) "Employee" means a person who performs services for,
69 and under the control and direction of, or contracts with, an
70 agency or independent contractor for wages or other
71 remuneration. The term includes a current or former employee or
72 an applicant for employment.

73 ~~(h)(e)~~ "Retaliatory Adverse personnel action" means the
74 discharge, suspension, transfer, or demotion of an any employee
75 or the withholding of bonuses, the reduction in salary or
76 benefits, or any other adverse action taken against an employee
77 ~~within the terms and conditions of employment~~ by an agency or
78 independent contractor which may dissuade a reasonable employee
79 from participating in any protected activity described in
80 subparagraphs (g)1. and 2.

81 (c) "Gross malfeasance" or "gross misconduct" means a
82 willful transgression of law or established rule which is of
83 such a degree or recurrence as to show a substantial disregard
84 of the employer's interests or the employee's duties and
85 obligations to the public.

86 (d) "Gross misfeasance" means misconduct or wrongdoing by a
87 public employee of such severity or frequency as to show

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88 substantial disregard of the state's or state contractor's
89 interests or the employee's duties and obligations to the
90 public.

91 (f)~~(d)~~ "Independent contractor" means a person, other than
92 an agency, engaged in any business and who enters into a
93 contract, including a provider agreement, with an agency.

94 (e)~~(e)~~ "Gross mismanagement" means a continuous pattern of
95 managerial abuses, wrongful or arbitrary and capricious actions,
96 or fraudulent or criminal conduct which may have a substantial
97 adverse economic impact.

98 (g) "Protected activity" means any of the following:

99 1. The reporting to an appropriate agency or supervisory
100 official of violations of law on the part of a public employer
101 or independent contractor which create a substantial and
102 specific danger to the public's health, safety, or welfare.

103 2. The disclosure of information to an appropriate agency
104 or supervisory official alleging acts of gross mismanagement,
105 gross malfeasance, gross misfeasance, gross misconduct, gross
106 waste of public funds, Medicaid fraud or program abuse, or gross
107 neglect of duty on the part of an agency, a public officer, or
108 an employee.

109 3. Participation in an investigation, hearing, or other
110 inquiry by an agency or federal government entity pursuant to
111 this section.

112 4. Refusal to participate in any retaliatory action
113 prohibited by this section.

114 (i) "State agency" means any official, officer, commission,
115 board, authority, council, committee, or department of the
116 executive branch of state government.

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117 (4) ACTIONS PROHIBITED.—

118 (a) An agency or independent contractor ~~may shall~~ not
119 dismiss, discipline, or take any other retaliatory adverse
120 ~~personnel~~ action against an employee for participating in
121 protected activity or for disclosing information pursuant to
122 subsection (6) the provisions of this section.

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

127 (c) ~~The provisions of~~ This subsection is shall not be
128 applicable when an employee or person discloses information
129 known, or which reasonably should be known, by the employee or
130 person to be false.

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

133 1. A person who has committed, or intentionally
134 participated in committing, a violation or suspected violation
135 for which protection under ss. 112.3187-112.31895 is being
136 sought.

137 2. A person while he or she is under the care, custody, or
138 control of the state correctional system, or after release from
139 the care, custody, or control of the state correctional system,
140 with respect to circumstances that occurred during any period of
141 incarceration.

142 (5) NATURE OF INFORMATION DISCLOSED.—

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

145 1. ~~(a)~~ Any violation or suspected violation of any federal,

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146 state, or local law, rule, or regulation committed by an
147 employee or agent of an agency or independent contractor which
148 creates and presents a substantial and specific danger to the
149 public's health, safety, or welfare; or-

150 2.-(b) Any act or reasonably suspected act of gross
151 mismanagement, gross malfeasance, gross misfeasance, gross
152 misconduct, gross waste of public funds, ~~suspected or actual~~
153 Medicaid fraud or program abuse, or gross neglect of duty
154 committed by an employee or agent of an agency or independent
155 contractor.

156 (b) Information disclosed by an employee or a former
157 employee of an independent contractor must relate to provisions
158 of the contract between the agency and the independent
159 contractor.

160 (6) TO WHOM INFORMATION DISCLOSED AND METHODS OF
161 REPORTING.-

162 (a) Information disclosed under this section alleging an
163 action on the part of a public employer or an independent
164 contractor which creates a substantial and specific danger to
165 the public's health, safety, or welfare, or alleging gross waste
166 of public funds or any other abuse or gross neglect of duty on
167 the part of an agency, a public officer, or an employee, must be
168 disclosed to the Chief Inspector General, agency inspector
169 general or employee designated as agency inspector general under
170 s. 112.3189(1), inspectors general under s. 20.055, or the
171 Florida Commission on Human Relations.

172 (b) The information disclosed by an employee or a person
173 pursuant to this subsection or subsection (5) must be submitted
174 in the form of a written and signed complaint to one of the

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175 following:

176 1. The employee's supervisory official, the Chief Inspector
177 General as defined in s. 14.32(1), the agency inspector general,
178 the employee designated as agency inspector general under s.
179 112.3189(1), inspectors general under s. 20.055, or to the
180 Florida Commission on Human Relations. Employees and independent
181 contractors of the Chief Inspector General, the employee
182 designated as an agency inspector general, or the Florida
183 Commission on Human Relations must meet the same requirements as
184 others affected by this section; or

185 2. An agency or a federal governmental entity that has
186 authority to investigate, police, manage, or otherwise remedy
187 the violation or act.

188 (c) If a disclosure is related to a local governmental
189 entity, including any regional, county, or municipal entity;
190 special district; community college district; or school
191 district, or any political subdivision thereof, the information
192 must be disclosed to a chief executive officer, as defined in s.
193 447.203(9), or other appropriate local official.

194 (d) Information disclosed to any other person or entity
195 does not qualify the employee or person for protection under
196 this section ~~The information disclosed under this section must~~
197 ~~be disclosed to any agency or federal government entity having~~
198 ~~the authority to investigate, police, manage, or otherwise~~
199 ~~remedy the violation or act, including, but not limited to, the~~
200 ~~Office of the Chief Inspector General, an agency inspector~~
201 ~~general or the employee designated as agency inspector general~~
202 ~~under s. 112.3189(1) or inspectors general under s. 20.055, the~~
203 ~~Florida Commission on Human Relations, and the whistle-blower's~~

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204 ~~hotline created under s. 112.3189. However, for disclosures~~
205 ~~concerning a local governmental entity, including any regional,~~
206 ~~county, or municipal entity, special district, community college~~
207 ~~district, or school district or any political subdivision of any~~
208 ~~of the foregoing, the information must be disclosed to a chief~~
209 ~~executive officer as defined in s. 447.203(9) or other~~
210 ~~appropriate local official.~~

211 ~~(7) EMPLOYEES AND PERSONS PROTECTED. This section protects~~
212 ~~employees and persons who disclose information on their own~~
213 ~~initiative in a written and signed complaint; who are requested~~
214 ~~to participate in an investigation, hearing, or other inquiry~~
215 ~~conducted by any agency or federal government entity; who refuse~~
216 ~~to participate in any adverse action prohibited by this section;~~
217 ~~or who initiate a complaint through the whistle-blower's hotline~~
218 ~~or the hotline of the Medicaid Fraud Control Unit of the~~
219 ~~Department of Legal Affairs; or employees who file any written~~
220 ~~complaint to their supervisory officials or employees who submit~~
221 ~~a complaint to the Chief Inspector General in the Executive~~
222 ~~Office of the Governor, to the employee designated as agency~~
223 ~~inspector general under s. 112.3189(1), or to the Florida~~
224 ~~Commission on Human Relations. The provisions of this section~~
225 ~~may not be used by a person while he or she is under the care,~~
226 ~~custody, or control of the state correctional system or, after~~
227 ~~release from the care, custody, or control of the state~~
228 ~~correctional system, with respect to circumstances that occurred~~
229 ~~during any period of incarceration. No remedy or other~~
230 ~~protection under ss. 112.3187-112.31895 applies to any person~~
231 ~~who has committed or intentionally participated in committing~~
232 ~~the violation or suspected violation for which protection under~~

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233 ~~ss. 112.3187-112.31895 is being sought.~~

234 (7)~~(8)~~ REMEDIES.—

235 (a) Any employee of or applicant for employment with any
236 state agency or an independent contractor of a state agency, as
237 the term "state agency" is defined in subsection (3) ~~s. 216.011~~,
238 who is discharged, disciplined, or subjected to other
239 retaliatory ~~adverse personnel~~ action, or denied employment,
240 because he or she engaged in an activity protected by this
241 section may file a complaint with, ~~which complaint must be made~~
242 ~~in accordance with s. 112.31895. Upon receipt of notice from the~~
243 Florida Commission on Human Relations. The complaint must be
244 made in accordance with the requirements of s. 112.31895 ~~of~~
245 ~~termination of the investigation, the complainant may elect to~~
246 ~~pursue the administrative remedy available under s. 112.31895 or~~
247 ~~bring a civil action within 180 days after receipt of the~~
248 ~~notice.~~

249 (b) Within 60 days after the action prohibited by this
250 section, any local public employee protected by this section may
251 file a complaint with the appropriate local governmental
252 authority, if that authority has established by ordinance an
253 administrative procedure for handling such complaints or has
254 contracted with the Division of Administrative Hearings under s.
255 120.65 to conduct hearings under this section. The
256 administrative procedure created by ordinance must provide for
257 the complaint to be heard by a panel of impartial persons
258 appointed by the appropriate local governmental authority. Upon
259 hearing the complaint, the panel must make findings of fact and
260 conclusions of law for a final decision by the local
261 governmental authority. Within 180 days after entry of a final

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262 decision by the local governmental authority, the public
263 employee who filed the complaint may bring a civil action in any
264 court of competent jurisdiction. If the local governmental
265 authority has not established an administrative procedure by
266 ordinance or contract, a local public employee may, within 180
267 days after the action prohibited by this section, bring a civil
268 action in a court of competent jurisdiction. For the purpose of
269 this paragraph, the term "local governmental authority" includes
270 any regional, county, or municipal entity, special district,
271 community college district, or school district or any political
272 subdivision of any of the foregoing.

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

277 (8)~~(9)~~ RELIEF.—In any action brought under this section,
278 the relief must include the following:

279 (a) Reinstatement of the employee to the same position held
280 before the retaliatory ~~adverse~~ action was commenced, or to an
281 equivalent position or reasonable front pay as alternative
282 relief.

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

285 (c) Compensation, if appropriate, for lost wages, benefits,
286 or other lost remuneration caused by the retaliatory ~~adverse~~
287 action.

288 (d) Payment of reasonable costs, including attorney
289 ~~attorney's~~ fees, to a substantially prevailing employee, or to
290 the prevailing employer if the employee filed a frivolous action

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291 in bad faith.

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

294 (f) Temporary reinstatement to the employee's former
295 position or to an equivalent position, pending the final outcome
296 on the complaint, if an employee complains of being discharged
297 in retaliation for a protected disclosure and if a court of
298 competent jurisdiction or the Florida Commission on Human
299 Relations, as applicable under s. 112.31895, determines that the
300 disclosure was not made in bad faith or for a wrongful purpose
301 or occurred after an agency's initiation of a personnel action
302 against the employee which includes documentation of the
303 employee's violation of a disciplinary standard or performance
304 deficiency. This paragraph does not apply to an employee of a
305 municipality.

306 (9) ~~(10)~~ AFFIRMATIVE DEFENSES.—It shall be an affirmative
307 defense to any action brought pursuant to this section that:

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

312 (b) The employee or person disclosed information that was
313 known, or reasonably should have been known, to be false; or

314 (c) The employee or person disclosed information that was
315 substantially the same as information publicly disclosed:

316 1. In a criminal, civil, or administrative hearing in which
317 the state is a party;

318 2. In a legislative, administrative, inspector general, or
319 other state report; a hearing; an audit; or an investigation; or

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320 3. By the news media.

321 (10)~~(11)~~ EXISTING RIGHTS.—Sections 112.3187-112.31895 do
 322 not diminish the rights, privileges, or remedies of an employee
 323 under any other law or rule or under any collective bargaining
 324 agreement or employment contract; however, the election of
 325 remedies in s. 447.401 also applies to whistleblower ~~whistle-~~
 326 ~~blower~~ actions.

327 Section 2. Paragraphs (b) and (c) of subsection (2) of
 328 section 112.3188, Florida Statutes, are amended, and subsection
 329 (3) is added to that section, to read:

330 112.3188 Confidentiality of information given to the Chief
 331 Inspector General, internal auditors, inspectors general, local
 332 chief executive officers, or other appropriate local officials.—

333 (2)

334 (b) All information received by a local chief executive
 335 officer or appropriate local official or information produced or
 336 derived from fact-finding or investigations conducted pursuant
 337 to the administrative procedure established by ordinance by a
 338 local government as authorized by s. 112.3187(7)(b) ~~s.~~
 339 ~~112.3187(8)(b)~~ is confidential and exempt from s. 119.07(1) and
 340 s. 24(a), Art. I of the State Constitution, if the information
 341 is being received or derived from allegations as set forth in
 342 paragraph (1)(a) or paragraph (1)(b) and an investigation is
 343 active.

344 (c) Information deemed confidential under this section may
 345 be disclosed by the Chief Inspector General, agency inspector
 346 general, chief internal auditor, a member or an employee of the
 347 Florida Commission on Human Relations, local chief executive
 348 officer, or other appropriate local official receiving the

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349 information if the recipient determines that the disclosure of
350 the information is absolutely necessary to prevent a substantial
351 and specific danger to the public's health, safety, or welfare
352 or to prevent the imminent commission of a crime. Information
353 disclosed under this subsection may be disclosed only to persons
354 who are in a position to prevent the danger to the public's
355 health, safety, or welfare or to prevent the imminent commission
356 of a crime based on the disclosed information.

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

358 a. It is an ongoing investigation or inquiry or collection
359 of information and evidence and is continuing with a reasonable,
360 good faith anticipation of resolution in the foreseeable future;
361 or

362 b. All or a portion of the matters under investigation or
363 inquiry are active criminal intelligence information or active
364 criminal investigative information as defined in s. 119.011.

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

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

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

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

375 3. Notwithstanding paragraphs (a), (b), and this paragraph,
376 information or records received or produced under this section
377 which are otherwise confidential under law or exempt from

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378 disclosure under chapter 119 retain their confidentiality or
379 exemption.

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

384 (3) The provisions of this section which provide for the
385 confidentiality of specified information supersede the rights,
386 privileges, or remedies of an employee granted under any other
387 law or rule or under any collective bargaining agreement or
388 employment contract which are in conflict.

389 Section 3. Section 112.3189, Florida Statutes, is amended
390 to read:

391 112.3189 Investigative procedures upon receipt of
392 whistleblower ~~whistle-blower~~ information from certain state and
393 state agency independent contractor employees.-

394 (1) This section only applies to the disclosure of
395 information as described in s. 112.3187(5) by an employee or a
396 former employee of, or an applicant for employment with, a state
397 agency, as the term "state agency" is defined in s. 112.3187(3),
398 or by an employee or a former employee of a state agency's
399 independent contractor ~~s. 216.011,~~ to the ~~Office of the Chief~~
400 ~~Inspector General of the Executive Office of the Governor~~ or to
401 the agency inspector general. If an agency does not have an
402 inspector general, the head of the state agency, as defined in
403 s. 112.3187(3) ~~s. 216.011,~~ shall designate an employee, in
404 consultation with the Chief Inspector General, who meets the
405 requirements provided in s. 20.055(4) to receive information
406 described in s. 112.3187(5). For purposes of this section and s.

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407 112.3188 only, the employee designated by the head of the state
408 agency is ~~shall be~~ deemed an agency inspector general.

409 (2) To facilitate the receipt of information described in
410 subsection (1), the Chief Inspector General shall periodically
411 ~~maintain an in-state toll-free whistle-blower's hotline and~~
412 ~~shall~~ circulate among the various state agencies an advisory for
413 all employees which indicates how to file a whistleblower
414 complaint ~~the existence of the toll-free number and its purpose~~
415 ~~and provides an address to which written whistle-blower~~
416 ~~information may be forwarded.~~

417 (3) When a person alleges information described in s.
418 112.3187(5), the Chief Inspector General or agency inspector
419 general actually receiving such information shall, within 20
420 days of receiving such information, determine:

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

423 (b) Whether the source of the information is a person who
424 is an employee or former employee of, or an applicant for
425 employment with, a state agency, as defined in s. 112.3187(3),
426 or an employee or a former employee of a state agency's
427 independent contractor ~~s. 216.011.~~

428 (c) Whether the information actually disclosed demonstrates
429 reasonable cause to suspect that an employee or agent of an
430 agency or independent contractor has violated any federal,
431 state, or local law, rule, or regulation, thereby creating and
432 presenting a substantial and specific danger to the public's
433 health, safety, or welfare, or has committed an act of gross
434 mismanagement, gross misconduct, gross malfeasance, gross
435 misfeasance, gross waste of public funds, Medicaid fraud or

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436 program abuse, or gross neglect of duty.

437 (4) If the Chief Inspector General or agency inspector
438 general under subsection (3) determines that the information
439 disclosed is not the type of information described in s.
440 112.3187(5), or that the source of the information is not a
441 person who is an employee or former employee of, or an applicant
442 for employment with, a state agency, as defined in s.
443 112.3187(3), or an employee or a former employee of a state
444 agency's independent contractor s. 216.011, or that the
445 information disclosed does not demonstrate reasonable cause to
446 suspect that an employee or agent of an agency or independent
447 contractor has violated any federal, state, or local law, rule,
448 or regulation, thereby creating and presenting a substantial and
449 specific danger to the public's health, safety, or welfare, or
450 has committed an act of gross mismanagement, gross misconduct,
451 gross malfeasance, gross misfeasance, gross waste of public
452 funds, Medicaid fraud or program abuse, or gross neglect of
453 duty, the Chief Inspector General or agency inspector general
454 shall notify the complainant of such fact and copy and return,
455 upon request of the complainant, any documents and other
456 materials that were provided by the complainant.

457 (5) ~~(a)~~ If the Chief Inspector General or agency inspector
458 general under subsection (3) determines that the information
459 disclosed is the type of information described in s.
460 112.3187(5), that the source of the information is from a person
461 who is an employee or a former employee of, or an applicant for
462 employment with, a state agency, as defined in s. 112.3187(3),
463 or an employee or a former employee of a state agency's
464 independent contractor s. 216.011, and that the information

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465 disclosed demonstrates reasonable cause to suspect that an
466 employee or agent of an agency or independent contractor has
467 violated any federal, state, or local law, rule, or regulation,
468 thereby creating a substantial and specific danger to the
469 public's health, safety, or welfare, or has committed an act of
470 gross mismanagement, gross misconduct, gross malfeasance, gross
471 misfeasance, gross waste of public funds, Medicaid fraud or
472 program abuse, or gross neglect of duty on the part of an
473 agency, a public officer, or an employee, the Chief Inspector
474 General or agency inspector general making such determination
475 shall then conduct an investigation, unless the Chief Inspector
476 General or the agency inspector general determines, within 30
477 days after receiving the allegations from the complainant, that
478 such investigation is unnecessary. For purposes of this
479 subsection, the Chief Inspector General or the agency inspector
480 general shall consider the following factors, but is not limited
481 to only the following factors, when deciding whether the
482 investigation is not necessary:

483 (a)1. The gravity of the disclosed information compared to
484 the time and expense of an investigation.

485 (b)2. The potential for an investigation to yield
486 recommendations that will make state government more efficient
487 and effective.

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

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

493 (e)5. Whether another agency may be conducting an

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494 investigation and whether any investigation under this section
495 could be duplicative.

496 ~~(f)6.~~ The time that has elapsed between the alleged event
497 and the disclosure of the information.

498 ~~(b) If the Chief Inspector General or agency inspector~~
499 ~~general determines under paragraph (a) that an investigation is~~
500 ~~not necessary, the Chief Inspector General or agency inspector~~
501 ~~general making such determination shall:~~

502 ~~1. Copy and return, upon request of the complainant, any~~
503 ~~documents and other materials provided by the individual who~~
504 ~~made the disclosure.~~

505 ~~2. Inform in writing the head of the state agency for the~~
506 ~~agency inspector general making the determination that the~~
507 ~~investigation is not necessary and the individual who made the~~
508 ~~disclosure of the specific reasons why an investigation is not~~
509 ~~necessary and why the disclosure will not be further acted on~~
510 ~~under this section.~~

511 (6) The agency inspector general may conduct an
512 investigation pursuant to subsection (5) ~~paragraph (5)(a)~~ only
513 if the person transmitting information to the agency inspector
514 general is an employee or a former employee of, or an applicant
515 for employment with, the agency inspector general's agency, or
516 is an employee or a former employee of the state agency's
517 independent contractor. The agency inspector general shall:

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

520 (b) Submit to the complainant and the Chief Inspector
521 General, within 90 ~~60~~ days after the date on which a
522 determination to conduct an investigation is made under

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523 subsection (5) ~~paragraph (5)(a)~~, a final written report that
524 sets forth the agency inspector general's findings, conclusions,
525 and recommendations, except as provided under subsection (11).
526 The complainant shall be advised in writing by the agency
527 inspector general ~~head~~ that the complainant may submit to the
528 Chief Inspector General and agency inspector general comments on
529 the final report within 10 ~~20~~ days of the date of the report and
530 that such comments will be attached to the final report.

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

534 (a) Promptly transmit to the appropriate ~~head of the state~~
535 agency inspector general the information with respect to which
536 the determination to conduct an investigation was made, and such
537 agency inspector general ~~head~~ shall conduct an investigation and
538 submit to the Chief Inspector General a final written report
539 that sets forth the agency inspector general's ~~head's~~ findings,
540 conclusions, and recommendations; or

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

543 2. Submit to the complainant, within 90 ~~60~~ days after the
544 date on which a determination to conduct an investigation is
545 made under subsection (5) ~~paragraph (5)(a)~~, a final written
546 report that sets forth the Chief Inspector General's findings,
547 conclusions, and recommendations, except as provided under
548 subsection (11). The complainant shall be advised in writing by
549 the Chief Inspector General that the complainant may submit to
550 the Chief Inspector General comments on the final report within
551 10 ~~20~~ days of the date of the report and that such comments will

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552 be attached to the final report.

553 (c) The Chief Inspector General may require an agency
554 inspector general or the employee designated as agency inspector
555 general under subsection (1) head to conduct an investigation
556 under paragraph (a) only if the information was transmitted to
557 the Chief Inspector General by:

558 1. An employee or a former employee of, or an applicant for
559 employment with, the agency, or an employee or a former employee
560 of the state agency's independent contractor, that the
561 information concerns; or

562 2. An employee who obtained the information in connection
563 with the performance of the employee's duties and
564 responsibilities.

565 (8) Final reports required under this section must be
566 reviewed and signed by the person responsible for conducting the
567 investigation (agency inspector general, employee designated as
568 agency inspector general under subsection (1) agency head, or
569 Chief Inspector General) and must include:

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

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

573 (c) A summary of any evidence obtained from the
574 investigation.

575 (d) A listing of any violation or apparent violation of any
576 law, rule, or regulation.

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

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

580 2. The restoration of an aggrieved employee.

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581 3. A disciplinary action against an employee.

582 4. The referral to the Department of Law Enforcement of any
583 evidence of a criminal violation.

584 (9) (a) A report required of the agency inspector general
585 ~~head~~ under paragraph (7) (a) shall be submitted to the Chief
586 Inspector General and the complainant within 90 ~~60~~ days after
587 the agency inspector general ~~head~~ receives the complaint from
588 the Chief Inspector General, except as provided under subsection
589 (11). The complainant shall be advised in writing by the agency
590 inspector general ~~head~~ that the complainant may submit to the
591 Chief Inspector General comments on the report within 10 ~~20~~ days
592 of the date of the report and that such comments will be
593 attached to the final report.

594 (b) Upon receiving a final report required under this
595 section, the Chief Inspector General shall review the report and
596 determine whether the report contains the information required
597 by subsection (8). If the report does not contain the
598 information required by subsection (8), the Chief Inspector
599 General shall determine why and note the reasons on an addendum
600 to the final report.

601 (c) The Chief Inspector General shall transmit any final
602 report under this section, any comments provided by the
603 complainant, and any appropriate comments or recommendations by
604 the Chief Inspector General to the Governor, the Legislative
605 Auditing Committee, the investigating agency, and the Chief
606 Financial Officer.

607 (d) If the Chief Inspector General does not receive the
608 report of the agency inspector general ~~head~~ within the time
609 prescribed in paragraph (a), the Chief Inspector General may

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610 conduct the investigation in accordance with paragraph (7)(b) or
 611 request that another agency inspector general conduct the
 612 investigation in accordance with subsection (6) and shall report
 613 the complaint to the Governor, to the ~~Joint~~ Legislative Auditing
 614 Committee, and to the investigating agency, together with a
 615 statement noting the failure of the agency inspector general
 616 ~~head~~ to file the required report.

617 (10) For any time period set forth in subsections (3), (6),
 618 (7), and (9), such time period may be extended in writing by the
 619 Chief Inspector General for good cause shown.

620 (11) If an investigation under this section produces
 621 evidence of a criminal violation, the report may ~~shall~~ not be
 622 transmitted to the complainant, and the agency head or agency
 623 inspector general shall notify the Chief Inspector General and
 624 the Department of Law Enforcement.

625 Section 4. Section 112.31895, Florida Statutes, is
 626 reordered and amended to read:

627 112.31895 Investigative procedures in response to
 628 retaliatory ~~prohibited personnel~~ actions.—

629 (1) COMPLAINT PROCEDURES.—

630 (a) If a disclosure or other protected activity under s.
 631 112.3187 includes or results in alleged retaliatory action
 632 ~~retaliation~~ by an employer, the employee or former employee of,
 633 or applicant for employment with, a state agency, as defined in
 634 s. 112.3187(3), or the employee or former employee of a state
 635 agency's independent contractor who s. 216.011, that is so
 636 affected may file a complaint alleging a retaliatory ~~prohibited~~
 637 ~~personnel~~ action. The, ~~which~~ complaint must be made by filing a
 638 written and signed complaint with the Office of the Chief

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639 Inspector General in the Executive Office of the Governor or the
640 Florida Commission on Human Relations, no later than 90 ~~60~~ days
641 after the retaliatory ~~prohibited personnel~~ action.

642 (b) Within 5 ~~three~~ working days after receiving a complaint
643 under this section, the office or officer receiving the
644 complaint shall acknowledge receipt of the complaint and provide
645 copies of the complaint and any other preliminary information
646 available concerning the disclosure of information under s.
647 112.3187 to each of the other parties named in paragraph (a) and
648 to the agency, ~~which parties shall each acknowledge receipt of~~
649 ~~such copies to the complainant.~~

650 (3) ~~(2)~~ FACT FINDING.—The Florida Commission on Human
651 Relations shall:

652 (a) Upon receipt of an ~~Receive any~~ allegation of a
653 retaliatory ~~personnel~~ action prohibited by s. 112.3187,
654 including a proposed or potential action, ~~and~~ conduct an
655 investigation ~~informal fact finding regarding any allegation~~
656 ~~under this section, to the extent necessary to determine whether~~
657 there are reasonable grounds to believe that a retaliatory
658 ~~prohibited personnel~~ action under s. 112.3187 has occurred, is
659 occurring, or is to be taken.

660 ~~(b) Notify the complainant, within 15 days after receiving~~
661 ~~a complaint, that the complaint has been received by the~~
662 ~~department.~~

663 ~~(b)~~ ~~(c)~~ Within 120 ~~90~~ days after ~~receiving~~ the complaint is
664 filed, determine whether reasonable grounds exist to believe
665 that a retaliatory action occurred, is occurring, or is to be
666 taken ~~provide the agency head and the complainant with a fact-~~
667 ~~finding report that may include recommendations to the parties~~

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668 ~~or proposed resolution of the complaint. The fact-finding report~~
 669 ~~shall be presumed admissible in any subsequent or related~~
 670 ~~administrative or judicial review.~~

671 (2)-(3) POWERS OF THE FLORIDA COMMISSION ON HUMAN RELATIONS
 672 CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.-

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

676 1. Receive and investigate complaints from employees
 677 alleging retaliation by state agencies, as the term "state
 678 agency" is defined in s. 112.3187(3), and by independent
 679 contractors ~~s. 216.011~~.

680 2. Protect employees and applicants for employment with
 681 such agencies from retaliatory actions ~~prohibited personnel~~
 682 ~~practices~~ under s. 112.3187.

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

685 4. Recommend disciplinary proceedings pursuant to
 686 investigation and appropriate agency rules and procedures.

687 5. Coordinate with the Chief Inspector General in the
 688 Executive Office of the Governor and the Florida Commission on
 689 Human Relations to receive, review, and forward to appropriate
 690 agencies, legislative entities, or the Department of Law
 691 Enforcement disclosures of a violation of any law, rule, or
 692 regulation, or disclosures of gross mismanagement, gross
 693 misconduct, gross malfeasance, gross misfeasance, ~~nonfeasance~~,
 694 neglect of duty, Medicaid fraud or program abuse, ~~or~~ gross waste
 695 of public funds, gross neglect of duty on the part of an agency,
 696 a public officer, or an employee, or substantial or specific

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697 damage to the health, welfare, or safety of the public.

698 6. Review rules pertaining to personnel matters issued or
699 proposed by the Department of Management Services, the Public
700 Employees Relations Commission, and other agencies, and, if the
701 Florida Commission on Human Relations finds that any rule or
702 proposed rule, on its face or as implemented, requires the
703 commission of a prohibited personnel practice, provide a written
704 comment to the appropriate agency.

705 7. Investigate, request assistance from other governmental
706 entities, and, if appropriate, bring actions concerning,
707 allegations of retaliation by state agencies under subparagraph
708 1.

709 8. Administer oaths, examine witnesses, take statements,
710 issue subpoenas, order the taking of depositions, order
711 responses to written interrogatories, and make appropriate
712 motions to limit discovery, pursuant to investigations under
713 subparagraph 1.

714 9. Intervene or otherwise participate, as a matter of
715 right, in any appeal or other proceeding arising under this
716 section before the Public Employees Relations Commission or any
717 other appropriate agency, except that the Florida Commission on
718 Human Relations must comply with the rules of the commission or
719 other agency and may not seek corrective action or intervene in
720 an appeal or other proceeding without the consent of the person
721 protected under ss. 112.3187-112.31895.

722 10. Conduct an investigation, ~~in the absence of an~~
723 ~~allegation,~~ to determine whether reasonable grounds exist to
724 believe that a retaliatory ~~prohibited~~ action or a pattern of
725 retaliatory ~~prohibited~~ action has occurred, is occurring, or is

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726 to be taken.

727 (b) Within 15 days after receiving a complaint that a
728 person has been discharged from employment allegedly for
729 engaging in disclosing protected activity information under s.
730 112.3187, the Florida Commission on Human Relations shall review
731 the information and determine whether temporary reinstatement is
732 appropriate under s. 112.3187(8)(f) ~~s. 112.3187(9)(f)~~. If the
733 Florida Commission on Human Relations so determines, based upon
734 a legal review of the complaint and accompanying materials, it
735 shall apply for an expedited order to show cause from the
736 appropriate agency or circuit court for the immediate
737 reinstatement of the employee who has been discharged subsequent
738 to the disclosure made under s. 112.3187, pending the ~~issuance~~
739 ~~of the final outcome of order on~~ the complaint.

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

743 ~~(d) If the Florida Commission on Human Relations is unable~~
744 ~~to conciliate a complaint within 60 days after receipt of the~~
745 ~~fact-finding report, the Florida Commission on Human Relations~~
746 ~~shall terminate the investigation. Upon termination of any~~
747 ~~investigation, the Florida Commission on Human Relations shall~~
748 ~~notify the complainant and the agency head of the termination of~~
749 ~~the investigation, providing a summary of relevant facts found~~
750 ~~during the investigation and the reasons for terminating the~~
751 ~~investigation. A written statement under this paragraph is~~
752 ~~presumed admissible as evidence in any judicial or~~
753 ~~administrative proceeding but is not admissible without the~~
754 ~~consent of the complainant.~~

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755 (c)~~(e)~~1. The Florida Commission on Human Relations may
756 request an agency or a circuit court to order a stay, on such
757 terms as the court requires, of any personnel action for 45 days
758 if the ~~Florida~~ commission ~~on Human Relations~~ determines that
759 reasonable grounds exist to believe that a retaliatory
760 ~~prohibited personnel~~ action has occurred, is occurring, or is to
761 be taken. The ~~Florida~~ commission ~~on Human Relations~~ may request
762 that such stay be extended for appropriate periods of time.

763 (d)2. If, in connection with any investigation under this
764 section, it is determined ~~the Florida Commission on Human~~
765 ~~Relations determines~~ that reasonable grounds exist to believe
766 that a criminal violation has occurred which has not previously
767 been reported ~~prohibited action has occurred, is occurring, or~~
768 ~~is to be taken which requires corrective action,~~ the Florida
769 Commission on Human Relations shall report the determination
770 ~~together with any findings or recommendations to the agency head~~
771 ~~and may report that determination and those findings and~~
772 ~~recommendations to the~~ Chief Inspector General and the
773 Department of Law Enforcement and to the state attorney having
774 jurisdiction over the matter ~~Governor and the Chief Financial~~
775 ~~Officer. The Florida Commission on Human Relations may include~~
776 ~~in the report recommendations for corrective action to be taken.~~

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

782 ~~4. If the Florida Commission on Human Relations finds, in~~
783 ~~consultation with the individual subject to the prohibited~~

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784 ~~action, that the agency has implemented the corrective action,~~
785 ~~the commission shall file such finding with the agency head,~~
786 ~~together with any written comments that the individual provides,~~
787 ~~and terminate the investigation.~~

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

792 ~~(g)1. If, in connection with any investigation under this~~
793 ~~section, it is determined that reasonable grounds exist to~~
794 ~~believe that a criminal violation has occurred which has not~~
795 ~~been previously reported, the Florida Commission on Human~~
796 ~~Relations shall report this determination to the Department of~~
797 ~~Law Enforcement and to the state attorney having jurisdiction~~
798 ~~over the matter.~~

799 ~~(e)2.~~ If an alleged criminal violation has been reported,
800 the Florida Commission on Human Relations shall confer with the
801 Department of Law Enforcement and the state attorney before
802 proceeding with the investigation of the retaliatory ~~prohibited~~
803 ~~personnel~~ action and may defer the investigation pending
804 completion of the criminal investigation and proceedings. The
805 Florida Commission on Human Relations shall inform the
806 complainant of the decision to defer the investigation and, if
807 appropriate, of the confidentiality of the investigation.

808 ~~(f)(h)~~ If, in connection with any investigation under this
809 section, the Florida Commission on Human Relations determines
810 that reasonable grounds exist to believe that a violation of a
811 law, rule, or regulation has occurred, other than a criminal
812 violation or a retaliatory ~~prohibited~~ action under this section,

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813 the commission may report such violation to the head of the
814 agency involved. Within 30 days after the agency receives the
815 report, the agency head shall provide to the commission a
816 certification that states that the head of the agency has
817 personally reviewed the report and indicates what action has
818 been or is to be taken and when the action will be completed.

819 (g)~~(i)~~ During any investigation under this section,
820 disciplinary action may not be taken against any employee of a
821 state agency, as the term "state agency" is defined in s.
822 112.3187(3) ~~s. 216.011~~, for reporting an alleged retaliatory
823 ~~prohibited personnel~~ action that is under investigation, or for
824 reporting any related activity, or against any employee for
825 participating in an investigation without notifying the Florida
826 Commission on Human Relations.

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

832 (4) NOTICE OF TERMINATION.—

833 (a) If the Florida Commission on Human Relations determines
834 that reasonable grounds do not exist to believe that a
835 retaliatory action occurred, is occurring, or is to be taken,
836 the commission must issue a termination of investigation for no
837 cause, which must provide the reason why the investigation was
838 terminated to the state agency and to the complainant.

839 (b)1. If the Florida Commission on Human Relations
840 determines that reasonable grounds exist to believe that a
841 retaliatory action occurred, is occurring, or is to be taken,

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842 the commission must issue a fact-finding report that may include
843 recommendations to the parties or propose a resolution of the
844 complaint. The commission has 60 days after the date of the
845 report to attempt to resolve the complaint. If the complaint
846 remains unresolved upon expiration of the 60-day period, the
847 commission must issue a notice of termination of investigation
848 with cause which must provide to the affected parties a summary
849 of relevant facts found during the investigation and the reason
850 why the investigation was terminated.

851 2. A fact-finding report issued under this paragraph is
852 presumed admissible in evidence in any subsequent judicial or
853 administrative proceeding but is not admissible without the
854 consent of the charging party.

855 (c) Upon receipt of the notice of termination of
856 investigation, a complainant may:

857 1. Bring a civil action in any court of competent
858 jurisdiction within 180 days after rendition of the notice; or
859 2. At least 60 days after rendition of the notice, file a
860 complaint with the Public Employees Relations Commission against
861 the employer-agency regarding the alleged retaliatory action.
862 The Public Employees Relations Commission has jurisdiction over
863 such complaints under ss. 112.3187 and 447.503(4) and (5).
864 Judicial review of any final order of the Public Employees
865 Relations Commission shall be as provided in s. 120.68.

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

868 ~~(4) RIGHT TO APPEAL.—~~

869 ~~(a) Not more than 60 days after receipt of a notice of~~
870 ~~termination of the investigation from the Florida Commission on~~

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871 ~~Human Relations, the complainant may file, with the Public~~
872 ~~Employees Relations Commission, a complaint against the~~
873 ~~employer-agency regarding the alleged prohibited personnel~~
874 ~~action. The Public Employees Relations Commission shall have~~
875 ~~jurisdiction over such complaints under ss. 112.3187 and~~
876 ~~447.503(4) and (5).~~

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

879 Section 5. Paragraph (f) of subsection (2) of section
880 14.32, Florida Statutes, is amended to read:

881 14.32 Office of Chief Inspector General.—

882 (2) The Chief Inspector General shall:

883 (f) Coordinate the activities of the Florida Public
884 Whistleblower's ~~Whistle-blower's~~ Act pursuant to chapter 112 and
885 maintain the whistleblower's ~~whistle-blower's~~ hotline to receive
886 complaints and information concerning the possible violation of
887 law or administrative rules, mismanagement, fraud, waste, abuse
888 of authority, malfeasance, or a substantial or specific danger
889 to the health, welfare, or safety of the public.

890 Section 6. Paragraphs (a), (b), and (f) of subsection (7)
891 of section 20.055, Florida Statutes, are amended to read:

892 20.055 Agency inspectors general.—

893 (7) In carrying out the investigative duties and
894 responsibilities specified in this section, each inspector
895 general shall initiate, conduct, supervise, and coordinate
896 investigations designed to detect, deter, prevent, and eradicate
897 fraud, waste, mismanagement, misconduct, and other abuses in
898 state government. For these purposes, each inspector general
899 shall:

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900 (a) Receive complaints and coordinate all activities of the
901 agency as required by the Florida Public Whistleblower's
902 ~~Whistle-blower's~~ Act pursuant to ss. 112.3187-112.31895.

903 (b) Receive and consider the complaints which do not meet
904 the criteria for an investigation under the Florida Public
905 Whistleblower's ~~Whistle-blower's~~ Act and conduct, supervise, or
906 coordinate such inquiries, investigations, or reviews as the
907 inspector general deems appropriate.

908 (f) Submit in a timely fashion final reports on
909 investigations conducted by the inspector general to the agency
910 head, except for whistleblower's ~~whistle-blower's~~
911 investigations, which shall be conducted and reported pursuant
912 to s. 112.3189.

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

915 112.31901 Investigatory records.—

916 (3) This section does not apply to whistleblower ~~whistle-~~
917 ~~blower~~ investigations conducted pursuant to ss. 112.3187,
918 112.3188, 112.3189, and 112.31895.

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

921 760.06 Powers of the commission.—Within the limitations
922 provided by law, the commission shall have the following powers:

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

926 Section 9. This act shall take effect July 1, 2020.