

By the Committee on Governmental Oversight and Accountability;
and Senator Gaetz

585-01751-26

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A bill to be entitled

An act relating to employee protections; amending s. 112.313, F.S.; defining terms; providing that public officers, public employees, and local government attorneys commit a breach of the public trust when they initiate adverse personnel actions against specified agency employees or independent contractors under certain circumstances; providing construction; creating s. 112.3242, F.S.; providing legislative intent; defining terms; prohibiting agencies and independent contractors from taking specified actions against employees or certain persons for disclosing certain information to the Commission on Ethics; providing applicability; requiring that information disclosed include specified violations or alleged violations; requiring disclosure of specified information to the commission under specified circumstances; providing that specified provisions protect employees and persons who submit written complaints to the commission or provide information to an investigator during an investigation of a complaint or referral; providing applicability; authorizing certain employees or applicants for employment to file complaints in accordance with specified provisions; authorizing certain complainants to pursue a specified administrative remedy or a civil action within a specified timeframe; requiring specified relief; providing applicability; providing that it is an affirmative defense to certain actions that the

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adverse personnel action was predicated on grounds
other than the exercising of certain protected rights;
providing construction; amending s. 112.324, F.S.;
requiring the Commission on Ethics to deliver copies
of complaints and any amendment thereto to the Public
Employees Relations Commission upon receiving a
written request from the agency; providing that such
delivery does not affect specified exemptions in
regard to the complaint and amendments; requiring that
such delivery be within a reasonable timeframe;
requiring that the Commission on Ethics redact certain
information under specified conditions; requiring the
commission to deliver complaints and any amendment
thereto to certain persons upon a notarized written
request; providing that such delivery does not affect
the specified exemptions of the complaint; requiring
that such delivery be within a reasonable timeframe;
requiring that the commission redact certain
information under specified conditions; creating s.
112.3243, F.S.; authorizing certain employees to file
a complaint with the commission within a specified
timeframe; requiring that the commission acknowledge
receipt of such complaint and provide copies of the
complaint and any other information to the agency head
or independent contractor within a specified
timeframe; requiring the commission to conduct
informal fact-finding regarding legally sufficient
complaints and provide, within a specified timeframe,
a certain report to the agency head or independent

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contractor; providing that the commission is empowered to take specified actions; requiring the commission to notify a complainant of the status of the investigation and actions taken when appropriate; requiring the commission to make a certain determination and provide a fact-finding report to specified entities under specified conditions; requiring the commission to file such determination and report with the agency head or independent contractor under specified conditions; requiring the commission to provide a certain notice to specified entities under specified conditions; requiring the commission to terminate investigations under specified circumstances; prohibiting disciplinary action against an employee under specified conditions; authorizing complainants to file a complaint against the employer agency with the Public Employees Relations Commission; providing that such commission has jurisdiction over such complaints; authorizing the Commission on Ethics to adopt rules; reenacting s. 112.3136(1), F.S., relating to standards of conduct for officers and employees of entities serving as chief administrative officer of political subdivisions, to incorporate the amendment made to s. 112.313, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (18) is added to section 112.313,

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Florida Statutes, to read:

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(18) RETALIATION FOR PROTECTED ACTIVITY PROHIBITED.—

(a) As used in this subsection, the term:

1. "Adverse personnel action" means the discharge, suspension, transfer, or demotion of an employee; the withholding of bonuses or reduction in salary or benefits of an employee; or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor of an agency.

2. "Exercise of ultimate decisionmaking authority" or "grant of approval" means having and using the authority to commence an adverse personnel action.

3. "Protected activity" means submitting a written complaint to the commission executed on the form specified in s. 112.324(1) and signed under oath or affirmation or providing information to an investigator during an investigation of a complaint or referral.

(b) A public officer, public employee, or local government attorney commits a breach of the public trust when he or she initiates an adverse personnel action against an agency employee or independent contractor who has engaged in a protected activity by an exercise of the public officer's, public employee's, or local government attorney's ultimate decisionmaking authority or a grant of his or her approval, or uses his or her position to cause another to initiate such an adverse personnel action, if the protected activity is the primary reason motivating the adverse personnel action. The

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117 communication or execution of an adverse personnel action
118 initiated by another's ultimate decisionmaking authority or
119 grant of approval does not constitute an exercise of one's
120 ultimate decisionmaking authority or a grant of one's approval.

121 Section 2. Section 112.3242, Florida Statutes, is created
122 to read:

123 112.3242 Adverse action against employee for disclosing
124 information of specified nature to the Commission on Ethics
125 prohibited; employee remedy and relief.—

126 (1) LEGISLATIVE INTENT.—It is the intent of the Legislature
127 to prevent agencies or independent contractors from taking
128 retaliatory action against an employee who reports to an
129 appropriate agency any violation of this part or s. 8, Art. II
130 of the State Constitution on the part of a public employer or an
131 independent contractor. It is further the intent of the
132 Legislature to prevent agencies or independent contractors from
133 taking retaliatory action against any person who discloses
134 information to an appropriate agency regarding alleged breaches
135 of the public trust or violations of s. 8, Art. II of the State
136 Constitution on the part of an agency, a public officer, or an
137 employee.

138 (2) DEFINITIONS.—As used in this section and s. 112.3243,
139 unless otherwise specified, the term:

140 (a) "Adverse personnel action" means the discharge,
141 suspension, transfer, or demotion of any employee or the
142 withholding of bonuses, the reduction in salary or benefits, or
143 any other adverse action taken against an employee within the
144 terms and conditions of employment by an agency or independent
145 contractor.

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146 (b) "Agency" means any state, regional, county, local, or
147 municipal governmental entity, whether executive, judicial, or
148 legislative; any official, officer, department, division,
149 bureau, commission, authority, or political subdivision therein;
150 or any public school, community college, or state university.

151 (c) "Employee" means a person who performs services for,
152 and is under the control and direction of, or contracts with, an
153 agency or independent contractor for wages or other
154 remuneration.

155 (d) "Independent contractor" means a person, other than an
156 agency, who is engaged in any business and enters into a
157 contract, including a provider agreement, with an agency.

158 (3) ACTIONS PROHIBITED.—

159 (a) An agency or independent contractor may not dismiss,
160 discipline, or take any other adverse personnel action against
161 an employee for disclosing information protected under this
162 section.

163 (b) An agency or independent contractor may not take any
164 adverse personnel action that affects the rights or interests of
165 a person in retaliation for the person's disclosure of
166 information protected under this section.

167 (c) This subsection does not apply when an employee or a
168 person discloses information known by the employee or person to
169 be false or when the employee or person discloses information
170 that forms the basis of an award of costs or attorney fees or
171 both pursuant to s. 112.317(7).

172 (4) NATURE OF INFORMATION DISCLOSED.—The protected
173 information disclosed under this section must include any
174 violation or suspected violation of:

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175 (a) Any standard of conduct imposed by this part;

176 (b) Section 8, Art. II of the State Constitution; or

177 (c) Section 11.062, s. 16.715, part II of chapter 287, s.
178 350.031, s. 350.04, s. 350.041, s. 350.042, or s. 350.0605.

179 (5) TO WHOM INFORMATION IS DISCLOSED.—The information
180 disclosed under this section must be disclosed to the
181 commission.

182 (6) EMPLOYEES AND PERSONS PROTECTED.—This section protects
183 employees and persons who submit a written complaint to the
184 commission executed on the form specified in s. 112.324(1) and
185 signed under oath or affirmation or who provide information to
186 an investigator during an investigation of a complaint. A remedy
187 or other protection under this section does not apply to any
188 employee or person who has committed or intentionally
189 participated in committing the violation or suspected violation
190 for which protection under this section is being sought.

191 (7) REMEDIES.—Any employee of or applicant for employment
192 with an agency who is subjected to adverse personnel action
193 because he or she engaged in an activity protected by this
194 section may file a complaint, which must be made in accordance
195 with s. 112.3243. Upon receipt of notice from the commission of
196 termination of the investigation, the complainant may elect to
197 pursue the administrative remedy available under s. 112.3243 or
198 bring a civil action within 180 days after receipt of the
199 notice.

200 (8) RELIEF.—In any action brought under this section, the
201 relief must include the following:

202 (a) Reinstatement of the employee to the same position held
203 before the adverse personnel action was commenced, or to an

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equivalent position, or reasonable front pay as an alternative relief.

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

(c) Compensation to the employee, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse personnel action.

(d) Payment of reasonable costs, including attorney fees, to a substantially prevailing employee, or to the prevailing employer if the employee filed a frivolous action in bad faith.

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

(f) Temporary reinstatement of the employee to his or her former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being discharged in retaliation for a protected disclosure and if a court of competent jurisdiction or the commission, as applicable under s. 112.3243, determines that the disclosure was not made in bad faith or for a wrongful purpose or that the disclosure occurred after an agency's or independent contractor's initiation of a personnel action against the employee which includes documentation of the employee's violation of a disciplinary standard or performance deficiency. This paragraph does not apply to an employee of a municipality.

(9) DEFENSE.—It is an affirmative defense to any action brought pursuant to this section that the adverse personnel action was predicated upon grounds other than, and would have been taken absent, the employee's or person's exercise of rights protected by this section.

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(10) EXISTING RIGHTS.—This section does not diminish the rights, privileges, or remedies of an employee under any other law or rule or under any collective bargaining agreement or employment contract; however, the election of remedies in s. 447.401 also applies to actions under this section.

Section 3. Paragraphs (g) and (h) are added to subsection (2) of section 112.324, Florida Statutes, to read:

112.324 Procedures on complaints of violations and referrals; public records and meeting exemptions.—

(2)

(g) Notwithstanding the exemptions in paragraphs (a)-(d), the Commission on Ethics shall deliver a copy of an ethics complaint, and its timely amendments, to the Public Employees Relations Commission upon receiving a written request from the agency. The Commission on Ethics' delivery of the complaint, and any amendment thereto, does not affect the exemptions in paragraphs (a)-(d) in any other context. The Commission on Ethics shall deliver the complaint, and any amendment thereto, within a reasonable timeframe. If the exemptions in paragraphs (a)-(d) are applicable at the time of the request, the commission must redact any designation to the complaint form it supplied after the form was filed, including, but not limited to, date stamps, receipt stamps, and complaint serial numbers.

(h) Notwithstanding the exemptions in paragraphs (a)-(d), the commission shall deliver a copy of an ethics complaint, and its timely amendments, to the person who filed the ethics complaint and identified himself or herself in the text of the complaint or its timely amendments as a current or former employee of the agency associated with the respondent named in

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the complaint or of an independent contractor of that agency,
upon receiving a notarized, written request from such person.
The commission's delivery of the complaint, and any amendment
thereto, does not affect the exemptions in paragraphs (a)-(d) in
any other context. The commission shall deliver the complaint
within a reasonable timeframe. If the exemptions in paragraphs
(a)-(d) are applicable at the time of the request, the
commission must redact any designation to the complaint form it
supplied after the form was filed, including, but not limited
to, date stamps, receipt stamps, and complaint serial numbers.

Section 4. Section 112.3243, Florida Statutes, is created
to read:

112.3243 Investigative procedures in response to prohibited
personnel actions against ethics complaints.-

(1) COMPLAINT.-

(a) If a disclosure under s. 112.3242 results in alleged
retaliation by an employer, the employee or former employee of
an agency or independent contractor that is so affected may file
a complaint alleging a prohibited personnel action, which must
be made by filing a written complaint with the commission no
later than 60 days after the prohibited personnel action.

(b) Within 5 working days after receiving a complaint under
this section, the commission shall acknowledge receipt of the
complaint and provide copies of the complaint and any other
preliminary information available concerning the disclosure of
information under s. 112.3242 to the employer, who shall
acknowledge receipt of such copies to the complainant.

(2) FACT-FINDING.-The commission shall:

(a) Receive any allegation of a personnel action prohibited

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by s. 112.3242, including a proposed or potential action, and conduct informal fact-finding regarding any allegation of a legally sufficient complaint under this section to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel action under s. 112.3242 has occurred, is occurring, or is to be taken.

(b) Within 180 days after receiving the complaint, provide the agency head or independent contractor and the complainant with a fact-finding report that may include recommendations to the parties or a proposed resolution of the complaint. The fact-finding report is admissible in any subsequent or related administrative or judicial review.

(3) INVESTIGATIVE POWERS AND TERMINATION OF INVESTIGATION.—

(a) The commission, in accordance with this section, is empowered to:

1. Receive and investigate complaints from employees alleging retaliation by agencies or independent contractors.

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

3. Create fact-finding reports and make determinations regarding investigations under subparagraph 1.

(b) The commission shall notify a complainant of the status of the investigation and any action taken at such times as the commission deems appropriate.

(c)1. If the commission determines that, in connection with any investigation, reasonable grounds exist to believe that a

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320 prohibited action has occurred, is occurring, or is to be taken
321 which requires corrective action, the commission must report the
322 determination together with a fact-finding report to the agency
323 head or independent contractor and the complainant. The
324 commission may include in the report recommendations for
325 corrective action.

326 2. If the commission, in consultation with the individual
327 subject to the prohibited action, finds that the agency or
328 independent contractor has implemented a corrective action in
329 response to the commission's determination and fact-finding
330 report, the commission must file such finding with the agency
331 head or independent contractor, together with any written
332 comments that the individual provides, and terminate the
333 investigation. The commission shall provide notice of the
334 termination of its investigation, along with the reason for
335 termination, to the complainant and the agency head or
336 independent contractor.

337 3. If the agency or independent contractor, after 35 days,
338 does not implement a corrective action, the commission must
339 terminate the investigation. If an investigation is terminated
340 pursuant to this subparagraph, the commission must provide
341 notice of the termination of its investigation, along with the
342 reason for termination, to the complainant and the agency head
343 or independent contractor, and notify the complainant of the
344 right to appeal under subsection (4).

345 (d) If the commission determines that there are no
346 reasonable grounds to believe that a prohibited personnel action
347 has occurred, is occurring, or is to be taken, the commission
348 must terminate its investigation and report its determination,

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349 together with a fact-finding report and a notice of termination
350 of investigation, to the agency head or independent contractor
351 and the complainant.

352 (e) During any investigation under this section,
353 disciplinary action may not be taken against an employee of an
354 agency or independent contractor for reporting an alleged
355 prohibited personnel action that is under investigation, or for
356 reporting any related activity, or against any employee for
357 participating in an investigation without notifying the
358 commission.

359 (4) RIGHT TO APPEAL.—

360 (a) The complainant may, within 21 days after receipt of a
361 notice of termination of an investigation from the commission,
362 file a complaint against the employer agency regarding the
363 alleged prohibited personnel action with the Public Employees
364 Relations Commission. The Public Employees Relations Commission
365 has jurisdiction over such complaints under ss. 112.3242 and
366 447.503(4) and (5).

367 (b) Judicial review of any final order of the commission
368 must be as provided in s. 120.68.

369 (5) RULEMAKING.—The commission may adopt rules to implement
370 this section.

371 Section 5. For the purpose of incorporating the amendment
372 made by this act to section 112.313, Florida Statutes, in a
373 reference thereto, subsection (1) of section 112.3136, Florida
374 Statutes, is reenacted to read:

375 112.3136 Standards of conduct for officers and employees of
376 entities serving as chief administrative officer of political
377 subdivisions.—The officers, directors, and chief executive

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officer of a corporation, partnership, or other business entity that is serving as the chief administrative or executive officer or employee of a political subdivision, and any business entity employee who is acting as the chief administrative or executive officer or employee of the political subdivision, for the purposes of the following sections, are public officers and employees who are subject to the following standards of conduct of this part:

(1) Section 112.313, and their "agency" is the political subdivision that they serve; however, the contract under which the business entity serves as chief executive or administrative officer of the political subdivision is not deemed to violate s. 112.313(3) or (7).

Section 6. This act shall take effect January 1, 2027.