

By the Committees on Rules; and Governmental Oversight and Accountability; and Senator Gaetz

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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 employees of an agency or independent contractor 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 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 adverse personnel action was

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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 receiving a notarized written request; providing that such delivery does not affect the specified exemptions of the complaint; requiring that such delivery happen within a reasonable timeframe; requiring the commission to 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 employee of an agency 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 an agency who is subjected to
192 adverse personnel action because he or she engaged in an
193 activity protected by this section may file a complaint, which
194 must be made in accordance with s. 112.3243. Upon receipt of
195 notice from the commission of termination of the investigation,
196 the complainant may elect to pursue the administrative remedy
197 available under s. 112.3243 or bring a civil action within 180
198 days after receipt of the notice.

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

201 (a) Reinstatement of the employee to the same position held
202 before the adverse personnel action was commenced, or to an
203 equivalent position, or reasonable front pay as an alternative

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204 relief.

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

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

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

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

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

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

232 (10) EXISTING RIGHTS.—This section does not diminish the

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233 rights, privileges, or remedies of an employee under any other
234 law or rule or under any collective bargaining agreement or
235 employment contract; however, the election of remedies in s.
236 447.401 also applies to actions under this section.

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

239 112.324 Procedures on complaints of violations and
240 referrals; public records and meeting exemptions.—

241 (2)

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

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

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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 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 by s. 112.3242, including a proposed or potential action, and

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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 prohibited action has occurred, is occurring, or is to be taken

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

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

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

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

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of investigation, to the agency head or independent contractor and the complainant.

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

(4) RIGHT TO APPEAL.—

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

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

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

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

112.3136 Standards of conduct for officers and employees of entities serving as chief administrative officer of political subdivisions.—The officers, directors, and chief executive officer of a corporation, partnership, or other business entity

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378 that is serving as the chief administrative or executive officer
379 or employee of a political subdivision, and any business entity
380 employee who is acting as the chief administrative or executive
381 officer or employee of the political subdivision, for the
382 purposes of the following sections, are public officers and
383 employees who are subject to the following standards of conduct
384 of this part:

385 (1) Section 112.313, and their "agency" is the political
386 subdivision that they serve; however, the contract under which
387 the business entity serves as chief executive or administrative
388 officer of the political subdivision is not deemed to violate s.
389 112.313(3) or (7).

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