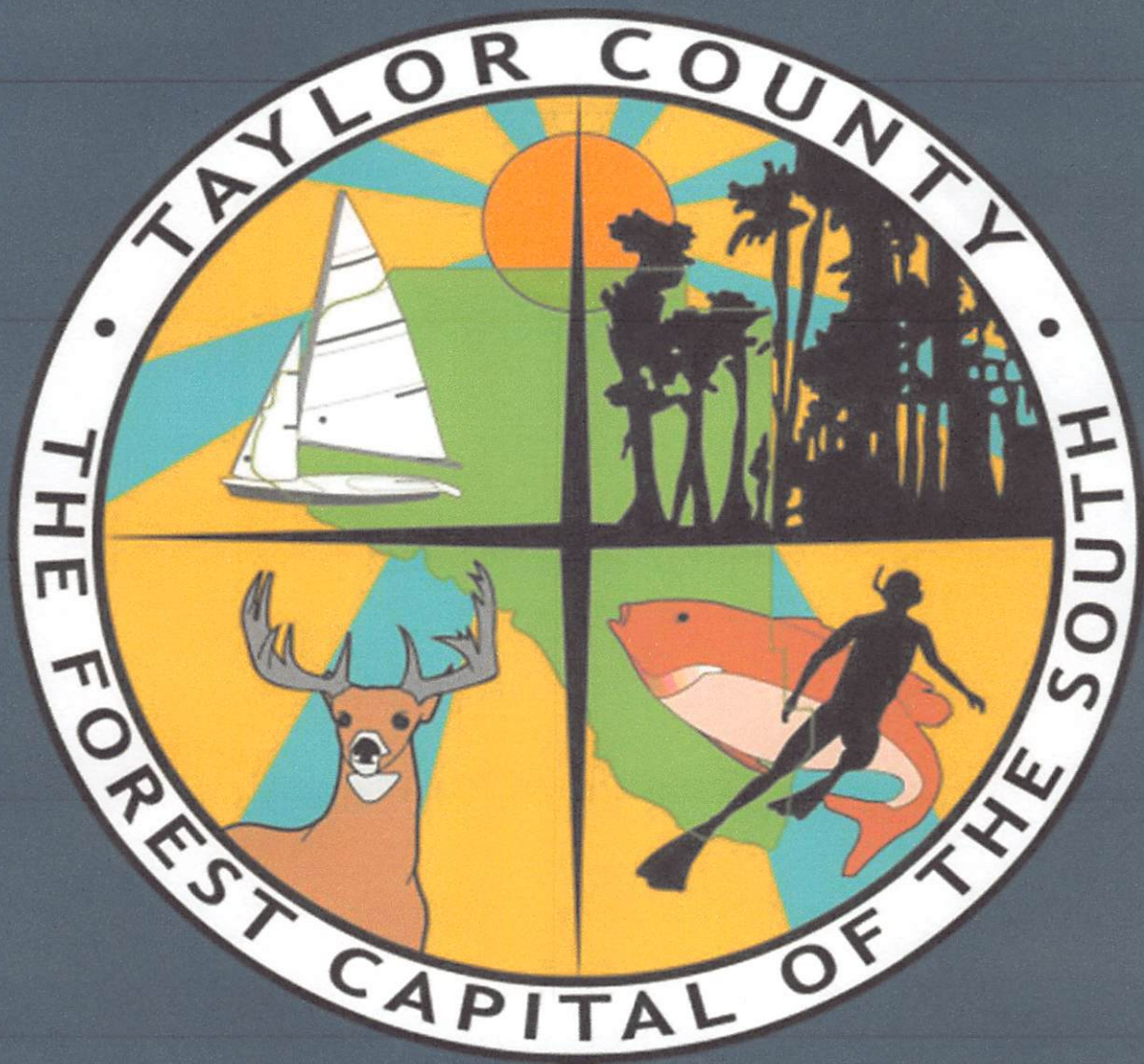


Taylor County

Board of County Commissioners

Fraudulent Misconduct and Anti-Fraud Awareness Policy



Updated September 2021

Introduction

Taylor County Board of County Commissioners is committed to creating an ethical work environment and demonstrating a high level of integrity. Elected officials, management, and employees serve and hold their positions for the benefit of the public. To maintain public trust and promote the public interest, officials and all employees must:

- Be responsible stewards of the tax payer funds using County funds and resources in the most effective, efficient manner possible.
- Comply with all federal, state, local laws and regulations, and contractual obligations, as well as policies and standards established by the Taylor County Board of County Commissioners.
- Commit themselves to effective and responsible leadership as well as professional management of County businesses at all levels of local government.
- Maintain a high level of integrity and honesty as a trusted public servant.

Approved advisory boards and committees, and anyone doing business with the County and/or receiving tax payer funds and resources are also expected to adhere to high ethical, open, and honest standards.

Taylor County Board of Commissioners
Fraudulent Misconduct and Anti-Fraud Awareness Policy

Taylor County Board of County Commissioners, elected officials, employees, appointed advisory boards and committees, and anyone who does business for or with Taylor County are all expected to create an open, informative, ethical, and honest culture for our citizens. This Policy is enforced to prohibit individuals from placing county resources at risk through fraudulent misconduct, misappropriation of assets, and fraudulent reporting of information impacting the County. It is the responsibility and required of the elected officials, employees, advisory boards/committees, and anyone doing business for or with Taylor County to abide by and enforce the provisions of this policy.

Actions constituting fraudulent misconduct, waste of assets, and fraudulent advice include but are not limited to:

1. Any dishonest or fraudulent act.
2. Misappropriation or misuse of funds, supplies, equipment, or other assets.
3. Impropriety in the handling or reporting of money or financial transactions.
4. Profiteering as a result of insider knowledge of county activities.
5. Disclosing confidential and/or proprietary information to outside parties.
6. Accepting or seeking anything of material value from vendors, contractors, or persons providing services or materials to the county.
7. Destruction, removal, or inappropriate use of records including electronic records, furniture, fixtures, equipment, and other county property.
8. Untrue representation about an important fact or event that causes Taylor County to suffer a monetary loss or loss of property.
9. Forgery or alteration of a check, bank draft, or any other financial document.
10. Authorizing or receiving compensation for hours or work not performed.
11. Theft of a check, cash, or other diversion of a tax payer payment.
12. Intentional untrue reporting of and misuse of grant or appropriated funds.

All persons employed by the Taylor County Board of County Commissioners must abide by local policies and standards, state and federal regulations including Florida Statutes Chapter 112 Part III Code of Ethics, and the Florida Sunshine Law. Section III Employee Information and Requirements of the Taylor County Personnel Policies Manual specifically refers to Standards of Conduct and Ethics. All County employees receive a copy of the Manual when hired and are required to abide by all policies. The Department Head/Professional Staff Evaluation includes a Code of Ethics with eleven Tenets which all applicable management staff are required to sign.

Fundamental elements of an effective Fraudulent Misconduct and Anti-Fraud Policy that are established by the County include:

1. Creating and maintaining a culture of honesty and integrity and an ethical work environment.
2. Setting the appropriate tone for intolerance of fraudulent acts by word and deed through compliance with all federal, state and local laws, rules, regulations, and policies.
3. Evaluation of the risks and types of fraud and implementing the process, procedures and controls needed to mitigate those risks.
4. Developing an appropriate oversight process.
5. Assign responsibility for the development of adequate management controls.

Execution of these elements include but are not limited to the following practices followed by the County Administrator's office, Human Resources, and management staff:

Hiring and Promoting Appropriate Employees

To be successful in preventing fraud and creating an ethical work environment, the County has set forth policies that minimize the chance of hiring or promoting individuals with low levels of honesty, especially for positions of trust.

Proactive hiring and promotion procedures include:

1. Conducting background investigations on individuals being considered for employment.
2. Thoroughly checking a candidate's education, employment history, and personal references.
3. Periodic training of all employees on the County's values, standards, and code of ethics.
4. Incorporating into regular performance reviews an evaluation of how each individual has contributed to creating an appropriate workplace environment in line with the County's values and code of ethics.

The County ensures compliance with Florida Statute 768.096- Employee presumption against negligent hiring.

Training

1. New employees are provided at the time of hiring, a copy of the Taylor County Personnel Policies Manual and Code of Ethics. These materials specifically cover an employee's duty to communicate actual or suspected fraud or misconduct. Employee conduct is outlined in Section III- Employee Information and Requirements of the Manual.
2. Employees receive refresher training periodically. Department Heads, Supervisors, and Coordinators receive training at a minimum of annually. It is the responsibility of Department Heads to ensure employees in their department(s) receive any updates or changes to personnel policies and information.
3. Flyers are posted at all County facilities which have employees in locations easily seen by all employees with contact information to report fraud without fear of any adverse actions.
4. Ensure employees know and understand they are fully protected from retaliation by management or other employees for reporting suspected wrong doing by the Whistleblowers Act and Florida Statute Chapter 112, Sections 112.3187-112.31895.

Purchasing and Inventory Procedures

The County has specific purchasing, procurement through the bidding processing, and inventory written policies, and procedures which are strictly adhered.

1. All purchasing and procurement goes through a **minimum** of a three step approval process.
2. All invoices and accounts payable goes through a **minimum** of a four step approval process.
3. All grant funded projects and purchases adhere to Steps 1 and 2 of the Grants Administration Handbook, 2 CFR 200 federal standards, as well as the policies and procedures of the funding agency and the terms of executed grant contracts.
4. All property with a value of more than \$5,000 is inventory tagged, tracked, and electronically maintained by the Board of County Commissioners. Inventory is taken at a **minimum** annually. All Department Heads are responsible for all equipment and capital items in departments they are responsible for and these responsibilities are clearly outlined in the inventory/tangible personal property manuals.

Elected officials, employees, appointed advisory boards/committees, and anyone who has a business relationship with Taylor County must abide by County anti-fraud policies and procedures. As a means to ensure all possible measures are taken by the County to eliminate any type of contractor fraud, bid submission documents and contracts may contain and require execution of the following documents as so applicable:

- Bid Affidavit
- Bid Bond
- Performance Bond
- Payment Bond
- Bidder's Qualification Questionnaire
- Form of Non-collusion Affidavit
- Drug-Free Workplace Certification
- Certification of Non-Segregated Facilities
- Indemnification And Hold Harmless
- Worker's Compensation Affidavit
- Florida Statutes, Public Entity Crimes Statement
- Davis-Bacon Certification
- Insurance Compliance Certification
- Standard Forms of Agreement
- Disadvantage Business Enterprise (DBE) Certificate of Compliance
- Standard Assurances
- Certification Regarding Debarment, Suspension And Other Responsibility Matters

All bid documents including Bid Committee review results and contracts will be retained by the County for a minimum of 7 years or longer if so specified by grant or funding agency contracts. All documents are available upon a public records request to the County.

Any elected official, employee, appointed advisory board or committee member, or anyone who does business for or with Taylor County who suspects dishonest or fraudulent behavior or activity should notify the Taylor County Human Resources Director at 850-838-3500 Ext. 113 or the County Administrator's office at 850-838-3500 Ext. 107 **immediately**. The complainant may be required to sign a written statement if the complaint is valid and requires action. Reporting anonymously is also encouraged and this report should include sufficient details of wrongdoing to allow for investigation. All employees are protected from adverse actions resulting from reporting suspected fraud or associated misconduct as per Florida Statutes 112.3187-112.31895 and the Protection for Whistleblowers Act 41USCs.4712. No person who acted in accordance with this policy shall be:

- Dismissed or threatened with dismissal
- Disciplined, suspended, or threatened with discipline or suspension
- Penalized or retaliated against
- Intimidated or coerced

The reporting individual should not contact the suspected individual(s) in an effort to determine the facts, discuss the complaint, or demand restitution. The reporting individual should not discuss the case, facts, suspicions, or allegations with anyone other than the Human Resources Director and/or the County Administrator unless directed to do so by the County Administrator and/or the County's legal counsel. It shall also be a violation of this policy for any informant/complainant to make a baseless allegation of fraudulent activity that is made with malice or reckless

disregard for truth that is intended to be disruptive or to cause harm to another individual. Any violation of this nature may result in disciplinary action up to and including termination of employment.

Great care will be taken in the investigation of suspected fraud, theft, misappropriation, improprieties, irregularities, or misrepresentation as to avoid mistaken accusations or alerting suspected individuals that an investigation is under way. This is paramount in order to avoid damaging the reputation of persons suspected of fraudulent activity and subsequently found innocent of wrongful conduct and the protection of Taylor County from potential civil liability. In accordance with Florida Statutes, until such time as a final report has been made, suspected frauds and the nature of the related audits /investigations shall remain confidential.

Actions and sanctions which may be taken for fraudulent activity include:

1. Employees suspected of participating in fraudulent activity may be suspended without pay during the course of the investigation as determined so by Human Resources and the County Administrator's office.
2. Employees found to have participated in fraudulent activity will be subject to disciplinary action up to and including termination from employment and possible criminal prosecution or civil action.
3. Employees found to have knowledge of fraudulent activity and who knowingly fail to report the activity will be subject to disciplinary action up to and including termination from employment.
4. The relationship of individuals, firms, and entities doing business for or with Taylor County found to have participated in fraudulent activity as defined by this policy will be subject to review with the possible termination or modification of business for or with the county and termination of all existing and pending contracts.
5. Appropriate law enforcement agencies, and agencies associated with the fraudulent activity such as but not limited to agencies that may have provided funding for projects, equipment, or services which involved fraudulent activity will be notified.
6. Criminal or civil action may be taken against individuals, firms or entities found to have participated in fraudulent activities while doing work for or with Taylor County.

The County Administrator is responsible for the administration, revision, interpretation, and enforcement of this policy. The policy will be reviewed annually and revised as so needed. In addition to policies set forth by the Taylor County Board of County Commissioners and policies set forth for employees in the Taylor County Personnel Policies Manual Employee Code of Ethics, the following guidelines will be adhered to by the County:

- Chapter 112 Florida Statutes
- Section 112.312 F.S. – Definitions
- Section 112.313 F. S. – Standards of Conduct
- Section 112.3187-112.31895 F.S. - Whistleblowers Act
- Chapter 119 Florida Statutes- Public Records Law
- Section 119.0713-Local Government Agency Exemptions from Inspection of Public Records
- Chapter 286 Florida Statutes – Sunshine Law
- Protection for Whistleblowers 41USCs.4712

ATTACHMENTS

1. Taylor County Personnel Policies- Section III Standards of Conduct And Ethics
2. Taylor County Employee Code of Ethics
3. Sample of County Anti-Fraud Flyer
4. Florida Statute Chapter 112 - Sections 112.313, 112.3187, and 112.31895
5. Florida Statute 768.096
6. Protection for Whistleblowers, 41USCs.4712

SECTION III - EMPLOYMENT INFORMATION AND REQUIREMENTS

STANDARDS OF CONDUCT AND ETHICS

Employees of Taylor County are goodwill ambassadors, and such status involves a degree of duty and obligation regarding public and private conduct which is not common to many other classes of employment. The attitude and behavior of a County employee should at all times be such as to promote goodwill and a favorable attitude of the public toward the County's administration and its programs and policies. Each employee shall conduct himself/herself in a manner which could not be construed to be in conflict of this interest. Employees who fail to comply with the County's standards of conduct may be disciplined up to and including termination. No employee shall engage in criminal, infamous, dishonest, immoral or other conduct injurious or prejudicial to the County.

All Taylor County employees must abide by a code of ethical and professional communications with peers, supervisors, employees, vendors and the public. Such communication enhances human worth and dignity by fostering truthfulness, fairness, responsibility, personal integrity, and respect for self and for others. As such, the following rules must be followed when communicating with anyone:

- A. Avoid argumentative tones and comments. Employees should state their position clearly and factually in a normal tone, allowing the other individual an opportunity to share her or his position, and inviting open discussion regarding both such positions.
- B. Honesty is always required. It is critical that employees never engage in deceit, exaggeration, or express dishonesty when dealing with other individuals. While some communications may be extremely difficult to have, employees are always expected to convey them in a candid, but respectful, manner.
- C. Respect issues of confidentiality. Employees of Taylor County will be faced with topics of great confidentiality at times and, as such, must avoid sharing any such information with anyone not needing to know the confidential information as part of their duties with Taylor County.

GIFTS: No employee may either solicit or accept anything of value, including a gift, loan, and reward, promise of future employment, favor or service that is based on any understanding that the vote, official action or judgment of the official would be influenced by such a gift. All employees are encouraged not to accept gifts, no matter how small, to avoid appearance of impropriety.

UNAUTHORIZED COMPENSATION: No employee or spouse or minor children may accept compensation, payment or anything of value which, with the exercise of reasonable care, is known or should be known to have been given to influence the vote or official action of such officer or employee.

DOING BUSINESS WITH ONE'S AGENCY: No employee who is empowered with the authority to purchase on behalf of the County in his/her official capacity may directly or indirectly purchase, rent, or lease any realty, goods or services from a business entity in which the employee, his/her spouse or children is an officer, partner, director, or proprietor, or in which the employee, his/her spouse, or children (or any combination of them) owns a material interest. No employee, acting in a private capacity, may rent, lease, or sell any realty, goods or services to the County or any of its agencies, except as provided in Florida Statute, Section 112.311.

MISUSE OF PUBLIC POSITION: No employee may use or attempt to use his official position or any property or resource within his trust, or perform his official duties to obtain special privilege, benefit, or exemption for himself or others.

DISCLOSURE OR USE OF CERTAIN INFORMATION: No employee may disclose or use information not available to the general public that is gained by reason of his/her public position for his personal benefit or the benefit of others. In addition to the above, all provisions of Florida Statute, Section 112, Code of Ethics for Public Officers and Employees, shall apply to County employees.



Taylor County

Board of County Commissioners'

Policy Manual

Policy #:

Title:

Effective Date:

12/10/2019

4.14

Standards of Conduct and Ethics

PURPOSE

The purpose of this policy is to define the expectation for conduct and ethics in local government employment.

POLICY

Employees of Taylor County are goodwill ambassadors, and such status involves a degree of duty and obligation regarding public and private conduct which is not common to many other classes of employment. The attitude and behavior of a County employee should at all times be such as to promote goodwill and a favorable attitude of the public toward the County's administration and its programs and policies. Each employee shall conduct himself/herself in a manner which could not be construed to be in conflict of this interest. Employees who fail to comply with the County's standards of conduct may be disciplined up to and including termination. No employee shall engage in criminal, infamous, dishonest, immoral or other conduct injurious or prejudicial to the County.

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Gifts: No employee may either solicit or accept anything of value, including a gift, loan, and reward, promise of future employment, favor or service that is based on any understanding that the vote, official action or judgment of the official would be influenced by such a gift. All employees are encouraged not to accept gifts, no matter how small, to avoid appearance of impropriety.

Unauthorized Compensation: No employee or spouse or minor children may accept compensation, payment or anything of value which, with the exercise of reasonable care, is known or should be known to have been given to influence the vote or official action of such officer or employee.

Doing Business With Ones Agency: No employee who is empowered with the authority to purchase on behalf of the County in his/her official capacity may directly or indirectly purchase, rent or lease any realty, goods or services from a business entity in which the employee, his/her spouse or children is an officer, partner, director, or proprietor, or in which the employee, his/her spouse, or children (or any combination of them) owns a material interest. No employee acting in a private capacity, may rent, lease, or sell any realty, goods or services to the County or any of its agencies, except as provided in Florida Statute, Section 112.311.

Misuse of Public Position: No employee may use or attempt to use his official position or any property or resource within his trust, or perform his official duties to obtain special privilege, benefit, or exemption for himself or others.

Disclosure of Use of Certain Information: No employee may disclose or use information not available to the general public that is gained by reason of his/her public position for his personal benefit or the benefit of others. In addition to the above, all provisions of Florida Statute Section 112, Code of Ethics for Public Officers and Employees, shall to apply to County Employees.

Responsibility for Accurate and Truthful Information: Employees of the County are responsible for providing accurate and truthful information to the County in all aspects of the employment relationship. This obligation begins with an employee's application and all information submitted to the County prior to hire and is a continuing obligation through an employee's tenure with the County. This includes but is not limited to, all information an employee submits regarding his or her internal administrative and benefit-related documentation, all records of time worked, all input regarding any form of performance evaluation or corrective action plan, and as related to an employee's performance of his or her job duties. Any violation of this obligation on the part of the employee will result in discipline upon discovery of the false information, with the likelihood such actions will lead to termination of employment.

RESPONSIBLE DEPARTMENT

All Departments

Sunset Date: none

If you are retaliated against

If you are an employee of a state agency and you disclose information under the Whistle-blower's Act and that disclosure results in alleged retaliation by an employer in the form of an adverse personnel action, you may file a written complaint with the Florida Commission on Human Relations no later than 60 days after the prohibited personnel action. You can contact the Commission by calling (800) 342-8170 or by writing to the following address:

Florida Commission on Human Relations
2009 Apalachee Parkway
Suite 100
Tallahassee, Florida 32301

"State agency" or "agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of this chapter and chapter 215, "state agency" or "agency" includes, but is not limited to, state attorneys, public defenders, the capital collateral regional counsels, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission.

Any other person protected by the Whistle-blower's Act may, after exhausting all available contractual or administrative remedies, bring a civil action in any court of competent jurisdiction within 180 days after the action prohibited by the Whistle-blower's Act.

State employees should contact the Whistle-blower's hotline to report:

- Violations of law that present a clear and present danger to the public's health, safety, or welfare
- Gross mismanagement
- Gross waste of funds
- Gross neglect of duty

Whistle-blower's Hotline
Post Office Box 151
Tallahassee, Florida 32302

(800) 543-5353 toll-free

(850) 922-1060 in Tallahassee

(850) 921-0817 facsimile



Executive Office of the Governor
Office of the Chief Inspector General

Revised 06/05

Whistle-blower's Hotline



Blow the
whistle
on fraud
and abuse
in Florida.

The Whistle-blower's Act

State employees who blow the whistle on fraud and abuse within state government are protected by law. Sections 112.3187–112.31895 of the Florida Statutes (F.S.) constitute the law known as the "Whistle-blower's Act." These and other Florida Statutes can be viewed on the official internet site of the Florida Legislature at www.leg.state.fl.us.

The legislative intent of the Whistle-blower's Act is to prevent agencies or independent contractors from taking retaliatory action against an employee who reports agency violations of law that create a substantial and specific danger to the public's health, safety, or welfare. It is also the intent of the legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who discloses information alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.

Why have a Hotline?

The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in state government. That responsibility includes maintaining an in-state toll-free whistle-blower's hotline, notifying all employees of the various state agencies of its existence, and providing an address to which whistle-blower information may be forwarded.

Who should call the Hotline?

State employees, former employees, and applicants of agencies or independent contractors:

"Employee" means a person who performs services for, and under the control and direction of, or contracts with, an agency or independent contractor for wages or other remuneration.

"Agency" means any state, regional, county, local, or municipal government entity, whether executive, judicial or legislative; any official, officer, department, division, bureau, commission, authority, or political subdivision therein; or any public school, community college, or state university.

[Note: For disclosures concerning a local government entity, including any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing, the information must be disclosed to a chief executive officer as defined in s. 447.203(9), F.S. or other appropriate official.]

"Independent contractor" means a person, other than an agency, engaged in any business and who enters into a contract, including a provider agreement, with an agency.

What should be reported?

The Whistle-blower's Hotline is not for general complaints or suggestions. Other means are available for resolving personnel problems or recommending cost-saving measures. This hotline is reserved for reporting:

- (a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.
- (b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.



What happens when I call?

When you call the Whistle-blower's Hotline we will take your information and ask basic questions concerning your case. Whether you call or write to the hotline, your information will be reviewed to determine the appropriate course of action. You will be advised as soon as a decision is made.

How do you investigate?

When circumstances require investigation, the Chief Inspector General or agency inspector general will conduct a thorough investigation and report its findings. The whistle-blower has an opportunity to attach comments to the final report before it is sent to the Governor, the investigating agency, the Joint Legislative Auditing Committee and the Comptroller.

How are my rights protected?

When your information meets whistle-blower criteria state law enables you to keep your identity confidential, unless disclosure is necessary to protect the public's health, safety or welfare, or absolutely necessary or unavoidable during the investigation. The Whistle-blower's Act also protects you from retaliatory action by your agency for disclosing adverse information.



Executive Office of the Governor
Office of the Chief Inspector General

Whistle-blower's Hotline
Post Office Box 151
Tallahassee, Florida 32302

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SearchCompliance.com

Whistleblower Protection Act

By Mary K. Pratt

The Whistleblower Protection Act of 1989 is a law that protects federal government employees in the United States from retaliatory action for voluntarily disclosing information about dishonest or illegal activities occurring in a government organization.

This law, sometimes called the WPA, also prohibits a federal agency from taking action or threatening to take action against an employee or applicant for disclosing information that he or she believes violated a law, [compliance](#) rule or another [regulation](#). The disclosed information could include reports of management wrongdoing, the waste of funds, an abuse of authority, and a potential risk to public health or safety.

The U.S. Office of Special Counsel has jurisdiction over allegations of federal [whistleblower](#) retaliation and investigates federal whistleblower complaints.

Who qualifies as a whistleblower?

A whistleblower is anyone who uncovers activities that could be illegal, unethical or inappropriate and then reports that activity to authorities or otherwise makes the activities known -- i.e., reporting the wrongdoing to a news outlet.

A whistleblower can be someone working in or with the public sector at the local, state or federal government level.

A whistleblower may also be someone working in or with private, for-profit companies, as well as [nonprofit](#) entities.

Many states have whistleblower laws, and those laws generally offer protections for whistleblowers in state and local government, as well as those working in the private sector. However, the WPA specifically applies to whistleblowers within the federal government.

History of whistleblower laws

The United States has a history of protecting whistleblowers, with some citing a 1778 law passed by the Continental Congress during the American Revolutionary War as the first federal law protecting whistleblowers. Congress passed the law in response to a 1777 case in which 10 sailors filed a petition stating that their politically connected Continental Navy commodore tortured British prisoners.

Other federal laws through the centuries have also offered some level of protection, with some pointing to the First Amendment right of free speech as offering protection for whistleblowers, too.

More recently, the Civil Service Reform Act of 1978 codified some whistleblower rights and protections that governed whistleblower cases filed by federal employees for a decade before the passage of the WPA.

However, the lawmakers that passed the WPA in 1989 did so specifically to better protect federal employees, stating in the text of the law that "The purpose of this Act is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government."

The 1989 law took several steps to strengthen protections for federal employees, including clarifying the procedure that employees should use to report suspected wrongdoing and avoid retaliation.

How the WPA works

The WPA covers current and former federal employees, as well as applicants for federal government jobs.

According to the act, a federal employee can report misconduct to the Office of the Special Counsel (OSC). The act considers misconduct to include:

- a violation of a law, rule or regulation;
- gross mismanagement;
- gross waste of funds;
- abuse of authority; and
- a substantial and specific danger to public health or safety.

The OSC does not investigate the claims itself; rather, they review the claim to determine the likelihood of wrongdoing -- which the act establishes as having reliable, firsthand knowledge of the misconduct.

If the OSC determines there's a likelihood of wrongdoing, it refers the claim to the appropriate regulatory or governing agency for further investigation. The agency leading the investigation must investigate the claim and report back to the OSC within 60 days.

The act states that an employee who makes disclosures as a whistleblower and then is subject to retaliatory actions can report the suspected acts of reprisal to the OSC, which would further investigate the charge.

It's important to note that the WPA does not cover all federal workers, nor does it allow the OSC to handle all claims. For example, the OSC would not handle claims for employees of federal contractors or military members. Moreover, employees of federal intelligence agencies such as the CIA and FBI do not have the same processes and protections that the WPA provides for other federal workers.

Additional whistleblower protections

In 2012, Congress passed the Whistleblower Protection Enhancement Act of 2012 to substantially strengthen protections for federal whistleblowers. Those additional protections included:

- clarifying the scope of protected disclosures;
- creating enhanced remedies for workers who have been subjected to retaliatory actions; and
- requiring agencies to educate employees about their rights.

In addition, other laws passed in the 2000s, such as the Dodd-Frank Wall Street Reform and Consumer Protection Act, the [Sarbanes-Oxley Act](#), and the Department of Veterans Affairs Accountability and Whistleblower Protection Act, offer protections for workers who act as whistleblowers.

31 Jul 2018

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Public Law 101-12
101st Congress

An Act

Apr. 10, 1989

[S. 20]

Whistleblower
Protection
Act of 1989.
5 USC 1201 note.

To amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Whistleblower Protection Act of 1989".

5 USC 1201 note.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) Federal employees who make disclosures described in section 2302(b)(8) of title 5, United States Code, serve the public interest by assisting in the elimination of fraud, waste, abuse, and unnecessary Government expenditures;

(2) protecting employees who disclose Government illegality, waste, and corruption is a major step toward a more effective civil service; and

(3) in passing the Civil Service Reform Act of 1978, Congress established the Office of Special Counsel to protect whistleblowers (those individuals who make disclosures described in such section 2302(b)(8)) from reprisal.

(b) PURPOSE.—The purpose of this Act is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government by—

(1) mandating that employees should not suffer adverse consequences as a result of prohibited personnel practices; and

(2) establishing—

(A) that the primary role of the Office of Special Counsel is to protect employees, especially whistleblowers, from prohibited personnel practices;

(B) that the Office of Special Counsel shall act in the interests of employees who seek assistance from the Office of Special Counsel; and

(C) that while disciplining those who commit prohibited personnel practices may be used as a means by which to help accomplish that goal, the protection of individuals who are the subject of prohibited personnel practices remains the paramount consideration.

SEC. 3. MERIT SYSTEMS PROTECTION BOARD; OFFICE OF SPECIAL COUNSEL; INDIVIDUAL RIGHT OF ACTION.

(a) MERIT SYSTEMS PROTECTION BOARD.—Chapter 12 of title 5, United States Code is amended—

(1) in section 1201 in the second sentence by striking out "Chairman and";

The Florida Senate

2018 Florida Statutes

<u>Title X</u> PUBLIC OFFICERS, EMPLOYEES, AND RECORDS	<u>Chapter 112</u> PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS <u>Entire Chapter</u>	SECTION 313 Standards of conduct for public officers, employees of agencies, and local government attorneys.
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112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(1) **DEFINITION.**—As used in this section, unless the context otherwise requires, the term “public officer” includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(2) **SOLICITATION OR ACCEPTANCE OF GIFTS.**—No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

(3) **DOING BUSINESS WITH ONE’S AGENCY.**—No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer’s or employee’s spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer’s or employee’s spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer’s or employee’s own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator’s place of business or when such offices are on property wholly or partially owned by the legislator. This subsection shall not affect or be construed to prohibit contracts entered into prior to:

- (a) October 1, 1975.
- (b) Qualification for elective office.
- (c) Appointment to public office.
- (d) Beginning public employment.

(4) **UNAUTHORIZED COMPENSATION.**—No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

(5) **SALARY AND EXPENSES.**—No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, as provided by law. No local government attorney shall be prevented from considering any matter affecting his or her salary, expenses, or other compensation as the local government attorney, as provided by law.

(6) **MISUSE OF PUBLIC POSITION.**—No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. [104.31](#).

(7) **CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.**—

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.—A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

(9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.—

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. "Employee" means:

(I) Any person employed in the executive or legislative branch of government holding a position in the Senior Management Service as defined in s. [110.402](#) or any person holding a position in the Selected Exempt Service as defined in s. [110.602](#) or any person having authority over policy or procurement employed by the Department of the Lottery.

(II) The Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, the Sergeant at Arms and Secretary of the Senate, and the Sergeant at Arms and Clerk of the House of Representatives.

(III) The executive director and deputy executive director of the Commission on Ethics.

(IV) An executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, analyst, or attorney of the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, Senate Minority Party Office, House Majority Party Office, or House Minority Party Office; or any person, hired on a contractual basis, having the power normally conferred upon such persons, by whatever title.

(V) The Chancellor and Vice Chancellors of the State University System; the general counsel to the Board of Governors of the State University System; and the president, provost, vice presidents, and deans of each state

university.

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph.

b. "Appointed state officer" means any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations.

c. "State agency" means an entity of the legislative, executive, or judicial branch of state government over which the Legislature exercises plenary budgetary and statutory control.

3.a. No member of the Legislature, appointed state officer, or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

b. For a period of 2 years following vacation of office, a former member of the Legislature may not act as a lobbyist for compensation before an executive branch agency, agency official, or employee. The terms used in this sub-subparagraph have the same meanings as provided in s. [112.3215](#).

4. An agency employee, including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

5. Any person violating this paragraph shall be subject to the penalties provided in s. [112.317](#) and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

6. This paragraph is not applicable to:

- a. A person employed by the Legislature or other agency prior to July 1, 1989;
- b. A person who was employed by the Legislature or other agency on July 1, 1989, whether or not the person was a defined employee on July 1, 1989;
- c. A person who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994;
- d. A person who has reached normal retirement age as defined in s. [121.021](#)(29), and who has retired under the provisions of chapter 121 by July 1, 1991; or
- e. Any appointed state officer whose term of office began before January 1, 1995, unless reappointed to that office on or after January 1, 1995.

(b) In addition to the provisions of this part which are applicable to legislators and legislative employees by virtue of their being public officers or employees, the conduct of members of the Legislature and legislative employees shall be governed by the ethical standards provided in the respective rules of the Senate or House of Representatives which are not in conflict herewith.

(10) EMPLOYEES HOLDING OFFICE.—

(a) No employee of a state agency or of a county, municipality, special taxing district, or other political subdivision of the state shall hold office as a member of the governing board, council, commission, or authority, by whatever name known, which is his or her employer while, at the same time, continuing as an employee of such employer.

(b) The provisions of this subsection shall not apply to any person holding office in violation of such provisions on the effective date of this act. However, such a person shall surrender his or her conflicting employment prior to seeking reelection or accepting reappointment to office.

(11) PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD MEMBERS.—No officer, director, or administrator of a Florida state, county, or regional professional or occupational organization or association, while holding such position, shall be eligible to serve as a member of a state examining or licensing board for the profession or occupation.

(12) EXEMPTION.—The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person. In addition, no person shall be held in violation of subsection (3) or subsection (7) if:

- (a) Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.
- (b) The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:
 - 1. The official or the official's spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;
 - 2. The official or the official's spouse or child has in no way used or attempted to use the official's influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and
 - 3. The official, prior to or at the time of the submission of the bid, has filed a statement with the Commission on Ethics, if the official is a state officer or employee, or with the supervisor of elections of the county in which the agency has its principal office, if the official is an officer or employee of a political subdivision, disclosing the official's interest, or the interest of the official's spouse or child, and the nature of the intended business.
- (c) The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.
- (d) An emergency purchase or contract which would otherwise violate a provision of subsection (3) or subsection (7) must be made in order to protect the health, safety, or welfare of the citizens of the state or any political subdivision thereof.
- (e) The business entity involved is the only source of supply within the political subdivision of the officer or employee and there is full disclosure by the officer or employee of his or her interest in the business entity to the governing body of the political subdivision prior to the purchase, rental, sale, leasing, or other business being transacted.
- (f) The total amount of the transactions in the aggregate between the business entity and the agency does not exceed \$500 per calendar year.
- (g) The fact that a county or municipal officer or member of a public board or body, including a district school officer or an officer of any district within a county, is a stockholder, officer, or director of a bank will not bar such bank from qualifying as a depository of funds coming under the jurisdiction of any such public board or body, provided it appears in the records of the agency that the governing body of the agency has determined that such officer or member of a public board or body has not favored such bank over other qualified banks.
- (h) The transaction is made pursuant to s. [1004.22](#) or s. [1004.23](#) and is specifically approved by the president and the chair of the university board of trustees. The chair of the university board of trustees shall submit to the Governor and the Legislature by March 1 of each year a report of the transactions approved pursuant to this paragraph during the preceding year.
- (i) The public officer or employee purchases in a private capacity goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency.
- (j) The public officer or employee in a private capacity purchases goods or services from a business entity which is subject to the regulation of his or her agency and:
 - 1. The price and terms of the transaction are available to similarly situated members of the general public; and
 - 2. The officer or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction.

(13) COUNTY AND MUNICIPAL ORDINANCES AND SPECIAL DISTRICT AND SCHOOL DISTRICT RESOLUTIONS REGULATING FORMER OFFICERS OR EMPLOYEES.—The governing body of any county or

municipality may adopt an ordinance and the governing body of any special district or school district may adopt a resolution providing that an appointed county, municipal, special district, or school district officer or a county, municipal, special district, or school district employee may not personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or employee for a period of 2 years following vacation of office or termination of employment, except for the purposes of collective bargaining. Nothing in this section may be construed to prohibit such ordinance or resolution.

¹(14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.—A person who has been elected to any county, municipal, special district, or school district office may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. For purposes of this subsection:

(a) The “government body or agency” of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.

(b) The “government body or agency” of any other county elected officer is the office or department headed by that officer, including all subordinate employees.

(c) The “government body or agency” of an elected municipal officer consists of the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.

(d) The “government body or agency” of an elected special district officer is the special district.

(e) The “government body or agency” of an elected school district officer is the school district.

(15) ADDITIONAL EXEMPTION.—No elected public officer shall be held in violation of subsection (7) if the officer maintains an employment relationship with an entity which is currently a tax-exempt organization under s. 501(c) of the Internal Revenue Code and which contracts with or otherwise enters into a business relationship with the officer’s agency and:

(a) The officer’s employment is not directly or indirectly compensated as a result of such contract or business relationship;

(b) The officer has in no way participated in the agency’s decision to contract or to enter into the business relationship with his or her employer, whether by participating in discussion at the meeting, by communicating with officers or employees of the agency, or otherwise; and

(c) The officer abstains from voting on any matter which may come before the agency involving the officer’s employer, publicly states to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining, and files a written memorandum as provided in s. [112.3143](#).

(16) LOCAL GOVERNMENT ATTORNEYS.—

(a) For the purposes of this section, “local government attorney” means any individual who routinely serves as the attorney for a unit of local government. The term shall not include any person who renders legal services to a unit of local government pursuant to contract limited to a specific issue or subject, to specific litigation, or to a specific administrative proceeding. For the purposes of this section, “unit of local government” includes, but is not limited to, municipalities, counties, and special districts.

(b) It shall not constitute a violation of subsection (3) or subsection (7) for a unit of local government to contract with a law firm, operating as either a partnership or a professional association, or in any combination thereof, or with a local government attorney who is a member of or is otherwise associated with the law firm, to provide any or all legal services to the unit of local government, so long as the local government attorney is not a full-time employee or member of the governing body of the unit of local government. However, the standards of conduct as provided in subsections (2), (4), (5), (6), and (8) shall apply to any person who serves as a local government attorney.

(c) No local government attorney or law firm in which the local government attorney is a member, partner, or employee shall represent a private individual or entity before the unit of local government to which the local government attorney provides legal services. A local government attorney whose contract with the unit of local government does not include provisions that authorize or mandate the use of the law firm of the local government attorney to complete legal services for the unit of local government shall not recommend or otherwise refer legal work to that attorney’s law firm to be completed for the unit of local government.

(17) BOARD OF GOVERNORS AND BOARDS OF TRUSTEES.—No citizen member of the Board of Governors of the State University System, nor any citizen member of a board of trustees of a local constituent university, shall have or hold any employment or contractual relationship as a legislative lobbyist requiring annual registration and reporting pursuant to s. [11.045](#).

History.—s. 3, ch. 67-469; s. 2, ch. 69-335; ss. 10, 35, ch. 69-106; s. 3, ch. 74-177; ss. 4, 11, ch. 75-208; s. 1, ch. 77-174; s. 1, ch. 77-349; s. 4, ch. 82-98; s. 2, ch. 83-26; s. 6, ch. 83-282; s. 14, ch. 85-80; s. 12, ch. 86-145; s. 1, ch. 88-358; s. 1, ch. 88-408; s. 3, ch. 90-502; s. 3, ch. 91-85; s. 4, ch. 91-292; s. 1, ch. 92-35; s. 1, ch. 94-277; s. 1406, ch. 95-147; s. 3, ch. 96-311; s. 34, ch. 96-318; s. 41, ch. 99-2; s. 29, ch. 2001-266; s. 20, ch. 2002-1; s. 894, ch. 2002-387; s. 2, ch. 2005-285; s. 2, ch. 2006-275; s. 10, ch. 2007-217; s. 16, ch. 2011-34; s. 3, ch. 2013-36; s. 2, ch. 2018-5.

¹**Note.**—Section 2, ch. 2018-5, amended subsection (14), effective July 1, 2019, to read:

(14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.—A person who has been elected to any county, municipal, special district, or school district office or appointed superintendent of a school district may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. For purposes of this subsection:

(a) The “government body or agency” of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.

(b) The “government body or agency” of any other county elected officer is the office or department headed by that officer, including all subordinate employees.

(c) The “government body or agency” of an elected municipal officer consists of the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.

(d) The “government body or agency” of an elected special district officer is the special district.

(e) The “government body or agency” of an elected school district officer is the school district.

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The Florida Senate

2012 Florida Statutes

<u>Title X</u> PUBLIC OFFICERS, EMPLOYEES, AND RECORDS	<u>Chapter 112</u> PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS <u>Entire Chapter</u>	SECTION 3187 Adverse action against employee for disclosing information of specified nature prohibited; employee remedy and relief.
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112.3187 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 “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 violations of law on the part of a public employer or independent contractor 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 alleging improper use of governmental office, gross waste of funds, 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 specified, the following words or terms shall have the meanings indicated:
- (a) “Agency” means any state, regional, county, local, or municipal government entity, whether executive, judicial, or legislative; any official, officer, department, division, bureau, commission, authority, or political subdivision therein; or any public school, community college, or state university.
- (b) “Employee” means a person who performs services for, and under the control and direction of, or contracts with, an agency or independent contractor for wages or other remuneration.
- (c) “Adverse personnel action” means the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor.
- (d) “Independent contractor” means a person, other than an agency, engaged in any business and who enters into a contract, including a provider agreement, with an agency.
- (e) “Gross mismanagement” means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.
- (4) **ACTIONS PROHIBITED.**—
- (a) An agency or independent contractor shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this section.
- (b) An agency or independent contractor shall not take any adverse action that affects the rights or interests of a person in retaliation for the person’s disclosure of information under this section.
- (c) The provisions of this subsection shall not be applicable when an employee or person discloses information known by the employee or person to be false.
- (5) **NATURE OF INFORMATION DISCLOSED.**—The information disclosed under this section must include:
- (a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public’s health, safety, or welfare.
- (b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

(6) TO WHOM INFORMATION DISCLOSED.—The information disclosed under this section must be disclosed to any agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act, including, but not limited to, the Office of the Chief Inspector General, an agency inspector general or the employee designated as agency inspector general under s. [112.3189](#)(1) or inspectors general under s. [20.055](#), the Florida Commission on Human Relations, and the whistle-blower's hotline created under s. [112.3189](#). However, for disclosures concerning a local governmental entity, including any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing, the information must be disclosed to a chief executive officer as defined in s. [447.203](#)(9) or other appropriate local official.

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

(8) REMEDIES.—

(a) Any employee of or applicant for employment with any state agency, as the term "state agency" is defined in s. [216.011](#), who is discharged, disciplined, or subjected to other adverse personnel action, or denied employment, because he or she engaged in an activity protected by this section may file a complaint, which complaint must be made in accordance with s. [112.31895](#). Upon receipt of notice from the Florida Commission on Human Relations of termination of the investigation, the complainant may elect to pursue the administrative remedy available under s. [112.31895](#) or bring a civil action within 180 days after receipt of the notice.

(b) Within 60 days after the action prohibited by this section, any local public employee protected by this section may file a complaint with the appropriate local governmental authority, if that authority has established by ordinance an administrative procedure for handling such complaints or has contracted with the Division of Administrative Hearings under s. [120.65](#) to conduct hearings under this section. The administrative procedure created by ordinance must provide for the complaint to be heard by a panel of impartial persons appointed by the appropriate local governmental authority. Upon hearing the complaint, the panel must make findings of fact and conclusions of law for a final decision by the local governmental authority. Within 180 days after entry of a final decision by the local governmental authority, the public employee who filed the complaint may bring a civil action in any court of competent jurisdiction. If the local governmental authority has not established an administrative procedure by ordinance or contract, a local public employee may, within 180 days after the action prohibited by this section, bring a civil action in a court of competent jurisdiction. For the purpose of this paragraph, the term "local governmental authority" includes any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing.

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

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

- (a) Reinstatement of the employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief.
- (b) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.
- (c) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action.

(d) Payment of reasonable costs, including attorney's 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 to the employee's 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 Florida Commission on Human Relations, as applicable under s. [112.31895](#), determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency'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.

(10) DEFENSES.—It shall be an affirmative defense to any action brought pursuant to this section that the adverse 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.

(11) EXISTING RIGHTS.—Sections [112.3187-112.31895](#) do 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 whistle-blower actions.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, ch. 86-233; s. 1, ch. 91-285; s. 12, ch. 92-316; s. 1, ch. 93-57; s. 702, ch. 95-147; s. 1, ch. 95-153; s. 15, ch. 96-410; s. 20, ch. 99-333; s. 2, ch. 2002-400.

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The 2021 Florida Statutes

[Title X](#)

PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

[Chapter 112](#)

PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS

[View Entire Chapter](#)

112.31895 Investigative procedures in response to prohibited personnel actions.—

(1) COMPLAINT.—

(a) If a disclosure under s. [112.3187](#) includes or results in alleged retaliation by an employer, the employee or former employee of, or applicant for employment with, a state agency, as defined in s. [216.011](#), that is so affected may file a complaint alleging a prohibited personnel action, which complaint must be made by filing a written complaint with the Office of the Chief Inspector General in the Executive Office of the Governor or the Florida Commission on Human Relations, no later than 60 days after the prohibited personnel action.

(b) Within 5 working days after receiving a complaint under this section, the office or officer receiving the complaint 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. [112.3187](#) to each of the other parties named in paragraph (a), which parties shall each acknowledge receipt of such copies to the complainant.

(2) FACT FINDING.—The Florida Commission on Human Relations shall:

(a) Receive any allegation of a personnel action prohibited by s. [112.3187](#), including a proposed or potential action, and conduct informal fact finding regarding any allegation under this section, to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel action under s. [112.3187](#) has occurred, is occurring, or is to be taken.

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

(3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

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

1. Receive and investigate complaints from employees alleging retaliation by state agencies, as the term “state agency” is defined in s. [216.011](#).
2. Protect employees and applicants for employment with such agencies from prohibited personnel practices under s. [112.3187](#).
3. Petition for stays and petition for corrective actions, including, but not limited to, temporary reinstatement.
4. Recommend disciplinary proceedings pursuant to investigation and appropriate agency rules and procedures.
5. Coordinate with the Chief Inspector General in the Executive Office of the Governor and the Florida Commission on Human Relations to receive, review, and forward to appropriate agencies, legislative entities, or the Department of Law Enforcement disclosures of a violation of any law, rule, or regulation, or disclosures of gross mismanagement, malfeasance, misfeasance, nonfeasance, neglect of duty, or gross waste of public funds.
6. Review rules pertaining to personnel matters issued or proposed by the Department of Management Services, the Public Employees Relations Commission, and other agencies, and, if the Florida Commission on Human Relations finds that any rule or proposed rule, on its face or as implemented, requires the commission of a prohibited personnel practice, provide a written comment to the appropriate agency.

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

8. 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.

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

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

(b) Within 15 days after receiving a complaint that a person has been discharged from employment allegedly for disclosing protected information under s. [112.3187](#), the Florida Commission on Human Relations shall review the information and determine whether temporary reinstatement is appropriate under s. [112.3187\(9\)\(f\)](#). If the Florida Commission on Human Relations so determines, it shall apply for an expedited order from the appropriate agency or circuit court for the immediate reinstatement of the employee who has been discharged subsequent to the disclosure made under s. [112.3187](#), pending the issuance of the final order on the complaint.

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

(d) If the Florida Commission on Human Relations is unable to conciliate a complaint within 35 days after providing the agency head and complainant with the fact-finding report, the Florida Commission on Human Relations shall terminate the investigation. Upon termination of any investigation, the Florida Commission on Human Relations shall notify the complainant and the agency head of the termination of the investigation, providing a summary of relevant facts found during the investigation and the reasons for terminating the investigation. A written statement under this paragraph is presumed admissible as evidence in any judicial or administrative proceeding but is not admissible without the consent of the complainant.

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

2. If, in connection with any investigation, the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a prohibited action has occurred, is occurring, or is to be taken which requires corrective action, the Florida Commission on Human Relations shall report the determination together with any findings or recommendations to the agency head and may report that determination and those findings and recommendations to the Governor and the Chief Financial Officer. The Florida Commission on Human Relations may include in the report recommendations for corrective action to be taken.

3. If, after 35 days, the agency does not implement the recommended action, the Florida Commission on Human Relations shall terminate the investigation and notify the complainant of the right to appeal under subsection (4), or may petition the agency for corrective action under this subsection.

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

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

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

2. If an alleged criminal violation has been reported, the Florida Commission on Human Relations shall confer with the Department of Law Enforcement and the state attorney before proceeding with the investigation of the prohibited personnel action and may defer the investigation pending completion of the criminal investigation and proceedings. The Florida Commission on Human Relations shall inform the complainant of the decision to defer the investigation and, if appropriate, of the confidentiality of the investigation.

(h) If, in connection with any investigation under this section, the Florida Commission on Human Relations determines that reasonable grounds exist to believe that a violation of a law, rule, or regulation has occurred, other than a criminal violation or a prohibited action under this section, the commission may report such violation to the head of the agency involved. Within 30 days after the agency receives the report, the agency head shall provide to the commission a certification that states that the head of the agency has personally reviewed the report and indicates what action has been or is to be taken and when the action will be completed.

(i) During any investigation under this section, disciplinary action may not be taken against any employee of a state agency, as the term "state agency" is defined in s. [216.011](#), 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 Florida Commission on Human Relations.

(j) The Florida Commission on Human Relations may also petition for an award of reasonable attorney's fees and expenses from a state agency, as the term "state agency" is defined in s. [216.011](#), pursuant to s. [112.3187\(9\)](#).

(4) RIGHT TO APPEAL.—

(a) Not more than 21 days after receipt of a notice of termination of the investigation from the Florida Commission on Human Relations, the complainant may file, with the Public Employees Relations Commission, a complaint against the employer-agency regarding the alleged prohibited personnel action. The Public Employees Relations Commission shall have jurisdiction over such complaints under ss. [112.3187](#) and [447.503\(4\)](#) and (5).

(b) Judicial review of any final order of the commission shall be as provided in s. [120.68](#).

History.—s. 14, ch. 92-316; s. 4, ch. 93-57; s. 703, ch. 95-147; s. 22, ch. 99-333; s. 130, ch. 2003-261; s. 7, ch. 2020-153.

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The 2021 Florida Statutes

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768.096 Employer presumption against negligent hiring.—

(1) In a civil action for the death of, or injury or damage to, a third person caused by the intentional tort of an employee, such employee's employer is presumed not to have been negligent in hiring such employee if, before hiring the employee, the employer conducted a background investigation of the prospective employee and the investigation did not reveal any information that reasonably demonstrated the unsuitability of the prospective employee for the particular work to be performed or for the employment in general. A background investigation under this section must include:

- (a) Obtaining a criminal background investigation on the prospective employee under subsection (2);
- (b) Making a reasonable effort to contact references and former employers of the prospective employee concerning the suitability of the prospective employee for employment;
- (c) Requiring the prospective employee to complete a job application form that includes questions concerning whether he or she has ever been convicted of a crime, including details concerning the type of crime, the date of conviction and the penalty imposed, and whether the prospective employee has ever been a defendant in a civil action for intentional tort, including the nature of the intentional tort and the disposition of the action;
- (d) Obtaining, with written authorization from the prospective employee, a check of the driver license record of the prospective employee if such a check is relevant to the work the employee will be performing and if the record can reasonably be obtained; or
- (e) Interviewing the prospective employee.

(2) To satisfy the criminal-background-investigation requirement of this section, an employer must request and obtain from the Department of Law Enforcement a check of the information as reported and reflected in the Florida Crime Information Center system as of the date of the request.

(3) The election by an employer not to conduct the investigation specified in subsection (1) does not raise any presumption that the employer failed to use reasonable care in hiring an employee.

History.—s. 16, ch. 99-225.


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41 USC 4712: Enhancement of contractor protection from reprisal for disclosure of certain information

Text contains those laws in effect on September 13, 2021

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CHAPTER 47-MISCELLANEOUS

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§4712. Enhancement of contractor protection from reprisal for disclosure of certain information

(a) PROHIBITION OF REPRISALS.-

(1) IN GENERAL.-An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

(2) PERSONS AND BODIES COVERED.-The persons and bodies described in this paragraph are the persons and bodies as follows:

(A) A Member of Congress or a representative of a committee of Congress.

(B) An Inspector General.

(C) The Government Accountability Office.

(D) A Federal employee responsible for contract or grant oversight or management at the relevant agency.

(E) An authorized official of the Department of Justice or other law enforcement agency.

(F) A court or grand jury.

(G) A management official or other employee of the contractor, subcontractor, grantee, or subgrantee who has the responsibility to investigate, discover, or address misconduct.

(3) RULES OF CONSTRUCTION.-For the purposes of paragraph (1)-

(A) an employee who initiates or provides evidence of contractor, subcontractor, grantee, or subgrantee misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract or grant shall be deemed to have made a disclosure covered by such paragraph; and

(B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(b) INVESTIGATION OF COMPLAINTS.-

(1) SUBMISSION OF COMPLAINT.-A person who believes that the person has been subjected to a reprisal