

FILED MAY 03 2006

SENATE FILE 2410
BY COMMITTEE ON GOVERNMENT
OVERSIGHT

(SUCCESSOR TO SSB 3271)

Passed Senate, Date 5-3-06 Passed House, Date _____
Vote: Ayes 48 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to government accountability and concerning
2 service contract requirements, contractual requirements for
3 certain entities receiving public moneys, requirements for
4 joint agreements involving governmental entities, additional
5 review by the auditor of state, the authority of the citizens'
6 aide, establishment of a whistleblower board, and the
7 authority of the legislative oversight committee, and
8 including an implementation provision and making penalties
9 applicable.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

11
12
13
14
15
16
17
18
19
20
21

TLSB 6711SV 81
ec/je/5

1 DIVISION I

2 GOVERNMENT ACCOUNTABILITY

3 Section 1. NEW SECTION. 8F.1 PURPOSE.

4 This chapter is intended to create mechanisms to most
5 effectively and efficiently monitor the utilization of public
6 moneys by providing the greatest possible accountability for
7 the expenditure of public moneys.

8 Sec. 2. NEW SECTION. 8F.2 DEFINITIONS.

9 As used in this chapter, unless the context otherwise
10 requires:

11 1. "Agency" means a unit of state government, which is an
12 authority, board, commission, committee, council, department,
13 examining board, or independent agency as defined in section
14 7E.4, including but not limited to each principal central
15 department enumerated in section 7E.5. However, "agency" does
16 not mean the Iowa public employees' retirement system created
17 under chapter 97B, the public broadcasting division of the
18 department of education created under section 256.81, the
19 statewide fire and police retirement system created under
20 chapter 411, or an agricultural commodity promotion board
21 subject to a producer referendum.

22 2. "Compensation" means payment of, or agreement to pay,
23 any money, thing of value, or financial benefit conferred in
24 return for labor or services rendered by an officer, employee,
25 or other person plus the value of benefits including but not
26 limited to casualty, disability, life, or health insurance,
27 other health or wellness benefits, vacations, holidays, and
28 sick leave, severance payments, retirement benefits, and
29 deferred compensation.

30 3. "Intergovernmental entity" means any separate
31 organization established in accordance with chapter 28E or
32 established by any other agreement between an agency and any
33 other governmental entity, whether federal, state, or local,
34 and any department, division, unit or subdivision thereof.

35 4. "Oversight agency" means an agency that contracts with

1 and disburses state or federal moneys to a recipient entity.

2 5. "Private agency" means an individual or any form of
3 business organization, including a nonprofit organization,
4 authorized under the laws of this state or any other state or
5 under the laws of any foreign jurisdiction.

6 6. "Recipient entity" means an intergovernmental entity or
7 a private agency that enters into a service contract with an
8 oversight agency to provide services which will be paid for
9 with local governmental, state, or federal moneys.

10 7. "Service" or "services" means work performed for an
11 oversight agency or for its client.

12 8. a. "Service contract" means a contract for a service
13 or services when the predominant factor, thrust, and purpose
14 of the contract as reasonably stated is for the provision of
15 services. When there is a contract for goods and services and
16 the predominant factor, thrust, and purpose of the contract as
17 reasonably stated is for the provision or rendering of
18 services with goods incidentally involved, a service contract
19 exists. "Service contract" includes grants when the
20 predominant factor, thrust, and purpose of the contract
21 formalizing the grant is for the provision of services. For
22 purposes of this chapter, a service contract only exists when
23 an individual service contract or a series of service
24 contracts entered into between an oversight agency and a
25 recipient entity exceeds five hundred thousand dollars or when
26 the grant or contract together with other grants or contracts
27 awarded to the recipient entity by the oversight agency during
28 the oversight agency's fiscal year exceeds five hundred
29 thousand dollars in the aggregate.

30 b. "Service contract" does not mean any of the following:

31 (1) A contract that involves transportation services or
32 the construction, reconstruction, improvement, repair, or
33 maintenance of the transportation system.

34 (2) A contract concerning the public safety peace
35 officers' retirement system created under chapter 97A, the

1 judicial retirement system governed by chapter 602, article 9,
2 or the deferred compensation plan established by the executive
3 council pursuant to section 509A.12.

4 (3) A contract for services provided for the operation,
5 construction, or maintenance of a public utility, combined
6 public utility, or a city enterprise as defined by section
7 384.24.

8 (4) A contract for dual party relay service required by
9 section 477C.3 or for the equipment distribution program
10 established under the authority of section 477C.4.

11 (5) A contract for services provided from resources made
12 available under Title XVIII, XIX, or XXI of the federal Social
13 Security Act.

14 (6) A contract for a court-appointed attorney.

15 (7) A contract with a federally insured financial
16 institution that is subject to mandatory periodic examinations
17 by a state or federal regulator.

18 (8) Any allocation of state or federal moneys by the
19 department of education to subrecipients on a formula or
20 noncompetitive basis.

21 (9) A contract for services subject to regulation under
22 Title XIII of the Code.

23 (10) A contract for vendor services.

24 (11) A contract concerning an entity that has contracted
25 with the state and is licensed and regulated by the insurance
26 division of the department of commerce.

27 9. "Vendor services" means services or goods provided by a
28 vendor that are required for the conduct of a state or federal
29 program for an organization's own use or for the use of
30 beneficiaries of the state or federal program and which are
31 ancillary to the operation of the state or federal program
32 under a service contract and not otherwise subject to
33 compliance requirements of the state or federal program. For
34 purposes of this subsection, "vendor" means a dealer,
35 distributor, merchant, or other seller which provides goods

1 and services within normal business operations, provides
2 similar goods or services to many different purchasers, and
3 operates in a competitive environment.

4 Sec. 3. NEW SECTION. 8F.3 CONTRACTUAL REQUIREMENTS.

5 1. As a condition of entering into a service contract with
6 an oversight agency, a recipient entity shall certify that the
7 recipient has the following information available for
8 inspection by the oversight agency and the legislative
9 services agency:

10 a. Information documenting the legal status of the
11 recipient entity, such as agreements establishing the entity
12 pursuant to chapter 28E or other intergovernmental agreements,
13 articles of incorporation, bylaws, or any other information
14 related to the establishment or status of the entity. In
15 addition, the information shall indicate whether the recipient
16 entity is exempt from federal income taxes under section
17 501(c)(3), of the Internal Revenue Code.

18 b. Information regarding the training and education
19 received by the members of the governing body of the recipient
20 entity relating to the duties and legal responsibilities of
21 the governing body.

22 c. Information regarding the procedures used by the
23 governing body of the recipient entity to do all of the
24 following:

25 (1) Review the performance of management employees and
26 establish the compensation of those employees.

27 (2) Review the recipient entity's internal controls
28 relating to accounting processes and procedures.

29 (3) Review the recipient entity's compliance with the
30 laws, rules, regulations, and contractual agreements
31 applicable to its operations.

32 (4) Information regarding adopted ethical and professional
33 standards of operation for the governing body and employees of
34 the recipient entity and information concerning the
35 implementation of these standards and the training of

1 employees and members of the governing body on the standards.
2 The standards shall include but not be limited to a nepotism
3 policy which shall provide, at a minimum, for disclosure of
4 familial relationships among employees and between employees
5 and members of the governing body, policies regarding
6 conflicts of interest, standards of responsibility and
7 obedience to law, fairness, and honesty.

8 d. Information regarding any policies adopted by the
9 governing body of the recipient entity that prohibit taking
10 adverse employment action against employees of the recipient
11 entity who disclose information about a service contract to
12 the oversight agency, the auditor of state, or the office of
13 citizens' aide and that state whether those policies are
14 substantially similar to the protection provided to state
15 employees under section 70A.28. The information provided
16 shall state whether employees of the recipient entity are
17 informed on a regular basis of their rights to disclose
18 information to the oversight agency, the office of citizens'
19 aide, the auditor of state, or the office of the attorney
20 general and the telephone numbers of those organizations.

21 2. The certification required by this section shall be
22 signed by an officer and director of the recipient entity, two
23 directors of the recipient entity, or the sole proprietor of
24 the recipient entity, whichever is applicable, and shall state
25 that the recipient entity is in full compliance with all laws,
26 rules, regulations, and contractual agreements applicable to
27 the recipient entity and the requirements of this chapter.

28 3. Prior to entering into a service contract with a
29 recipient entity, the oversight agency shall determine whether
30 the recipient entity can reasonably be expected to comply with
31 the requirements of the service contract. If the oversight
32 entity is unable to determine whether the recipient entity can
33 reasonably be expected to comply with the requirements of the
34 service contract, the oversight entity shall request such
35 information from the recipient entity as described in

1 subsection 1 to make a determination. If the oversight agency
2 determines from the information provided that the recipient
3 entity cannot reasonably be expected to comply with the
4 requirements of the service contract, the oversight agency
5 shall not enter into the service contract.

6 Sec. 4. NEW SECTION. 8F.4 REPORTING REQUIREMENTS.

7 1. a. As a condition of continuing to receive state or
8 federal moneys through an oversight agency for a service
9 contract, a recipient entity shall file an annual report with
10 the oversight agency and with the legislative services agency
11 within ten months following the end of the recipient entity's
12 fiscal year.

13 b. However, the annual report shall not be required to be
14 filed under any of the following circumstances:

15 (1) The recipient entity reports information otherwise
16 required to be included in an annual report described in
17 subsection 2 to the oversight agency pursuant to federal or
18 state statutes or rules. The information otherwise required
19 to be reported to the oversight agency shall be filed with the
20 legislative services agency.

21 (2) The recipient entity is recognized by the Internal
22 Revenue Code as a nonprofit organization or entity under
23 section 501(c)(3) of the Internal Revenue Code and is located
24 in Iowa and the entity provides evidence that its board of
25 directors has adopted the Iowa principles and practices for
26 charitable nonprofit excellence and provides a copy of the
27 internal revenue service form 990 for all fiscal years in
28 which service contract revenues are reported.

29 2. The annual report required to be filed pursuant to this
30 section shall contain the following:

31 a. Financial information relative to the expenditure of
32 state and federal moneys for the prior year pursuant to the
33 service contract. The financial information shall include but
34 is not limited to budget and actual revenue and expenditure
35 information for the year covered.

1 b. Financial information relating to service contracts
2 with the oversight agency during the preceding year, including
3 the costs by category to provide the contracted services.

4 c. Reportable conditions in internal control or material
5 noncompliance with provisions of laws, rules, regulations, or
6 contractual agreements included in external audit reports of
7 the recipient entity covering the preceding year.

8 d. Corrective action taken or planned by the recipient
9 entity in response to reportable conditions in internal
10 control or material noncompliance with laws, rules,
11 regulations, or contractual agreements included in external
12 audit reports covering the preceding year.

13 e. Any changes in the information submitted in accordance
14 with section 8F.3.

15 f. A certification signed by an officer and director of
16 the recipient entity, two directors of the recipient entity,
17 or the sole proprietor of the recipient entity, whichever is
18 applicable, stating the annual report is accurate and the
19 recipient entity is in full compliance with all laws, rules,
20 regulations, and contractual agreements applicable to the
21 recipient entity and the requirements of this chapter.

22 3. A recipient entity shall be required to submit such
23 supplemental information as requested by the oversight agency
24 or the legislative services agency relating to the entity's
25 expenditure of state and federal moneys.

26 Sec. 5. NEW SECTION. 8F.5 ENFORCEMENT.

27 Any service contract awarded to a recipient entity shall
28 provide that the oversight agency may terminate the service
29 contract if the recipient entity, during the duration of the
30 contract, fails to comply with the requirements of this
31 chapter. In addition, the service contract shall provide a
32 mechanism for the forfeiture and recovery of state or federal
33 funds expended by a recipient entity in violation of the laws
34 applicable to the expenditure of the money or the requirements
35 of the service contract and this chapter.

1 Sec. 6. Section 8E.208, Code 2005, is amended by adding
2 the following new unnumbered paragraph:

3 NEW UNNUMBERED PARAGRAPH. Performance measurement is
4 essential to ensuring adequate accountability over public
5 resources and the exchange of public resources for desirable
6 and acceptable public benefits. Performance measurement must
7 include an assessment of whether agencies have adequate
8 control procedures in place, and whether those control
9 procedures are operating effectively, to determine that
10 agencies are receiving or providing services of adequate
11 quality, public resources are being used effectively and
12 efficiently, and public resources are being used for
13 appropriate and meaningful activities.

14 Sec. 7. Section 28E.5, Code 2005, is amended by adding the
15 following new subsections:

16 NEW SUBSECTION. 7. That the entity created or the
17 administrator or joint board specified in the agreement shall
18 be a governmental body for purposes of chapter 21 and a
19 government body for purposes of chapter 22.

20 NEW SUBSECTION. 8. That all proceedings of each regular,
21 adjourned, or special meeting of the entity created or the
22 administrator or joint board specified in the agreement,
23 including the schedule of bills allowed, shall be published
24 after adjournment of the meeting in a newspaper of general
25 circulation within the geographic area served by the entity
26 created or the administrator or joint board specified in the
27 agreement. The entity created or the administrator or joint
28 board specified in the agreement shall furnish a copy of the
29 proceedings to be published to the newspaper within one week
30 following adjournment of the meeting. The publication of the
31 schedule of bills allowed shall include a list of all salaries
32 paid for services performed, showing the name of the person or
33 firm performing the service and the amount paid. However, the
34 names and gross salaries of persons regularly employed by the
35 entity created or the administrator or joint board specified

1 in the agreement shall only be published annually.

2 Sec. 8. IMPLEMENTATION PROVISION.

3 1. This division of this Act applies to service contracts
4 entered into or renewed by an oversight agency, as those terms
5 are defined in section 8F.2 as created in this division of
6 this Act, on or after October 1, 2006.

7 2. The section of this division of this Act amending Code
8 section 28E.5 is applicable on or after July 1, 2006.

9

DIVISION II

10

AUDITOR OF STATE DUTIES

11 Sec. 9. Section 11.36, Code 2005, is amended by striking
12 the section and inserting in lieu thereof the following:

13 11.36 REVIEW OF ENTITIES RECEIVING PUBLIC MONEYS.

14 1. The auditor of state may, at the request of a
15 department, review the audit working papers prepared by a
16 certified public accountant covering the receipt and
17 expenditure of state or federal funds provided by the
18 department to any other entity to determine if the receipt and
19 expenditure of those funds by the entity is consistent with
20 the laws, rules, regulations, and contractual agreements
21 governing those funds. Upon completion of the review, the
22 auditor of state shall report whether, in the auditor of
23 state's judgment, the auditor of state believes the certified
24 public accountant's working papers adequately demonstrate that
25 the laws, rules, regulations, and contractual agreements
26 governing the funds have been substantially complied with. If
27 the auditor of state does not believe the certified public
28 accountant's working papers adequately demonstrate that the
29 laws, rules, regulations, and contractual agreements have been
30 substantially complied with or believes a complete or partial
31 reaudit is necessary based on the provisions of section 11.6,
32 subsection 4, paragraph "a", "b", or "c", the auditor of state
33 shall notify the certified public accountant and the
34 department of the actions the auditor of state believes are
35 necessary to determine that the entity is in substantial

1 compliance with those laws, rules, regulations, and
2 contractual agreements. The auditor of state may assist
3 departments with actions to determine that the entity is in
4 substantial compliance. Departments shall reimburse the
5 auditor of state for the cost of the review and any subsequent
6 assistance provided by the auditor of state.

7 2. The auditor of state may, at the request of a
8 department, review the records covering the receipt and
9 expenditure of state or federal funds provided by the
10 department to any other entity which has not been audited by a
11 certified public accountant to determine if the receipt and
12 expenditure of those funds by the entity is consistent with
13 the laws, rules, regulations, and contractual agreements
14 governing those funds. Upon completion of the review, the
15 auditor of state shall report whether, in the auditor of
16 state's judgment, the auditor of state believes the entity
17 adequately demonstrated that the laws, rules, regulations, and
18 contractual agreements governing the funds have been
19 substantially complied with. If the auditor of state does not
20 believe the entity adequately demonstrated that the laws,
21 rules, regulations, and contractual agreements have been
22 substantially complied with, the auditor of state shall notify
23 the department of the actions the auditor of state believes
24 are necessary to determine that the entity is in substantial
25 compliance with those laws, rules, regulations, and
26 contractual agreements. The auditor of state may assist a
27 department with actions to determine that the entity is in
28 substantial compliance. Departments shall reimburse the
29 auditor of state for the cost of the review and any subsequent
30 assistance provided by the auditor of state.

31 3. When, in the auditor of state's judgment, the auditor
32 of state finds that sufficient information is available to
33 demonstrate that an entity receiving state or federal funds
34 from a department may not have substantially complied with the
35 laws, rules, regulations, and contractual agreements governing

1 those funds, the auditor of state shall notify the department
2 providing those funds to the entity of the auditor of state's
3 finding. The department shall cooperate with the auditor of
4 state to establish actions to be taken to determine whether
5 substantial compliance with those laws, rules, regulations,
6 and contractual agreements has been achieved by the entity
7 receiving the state or federal funds from the department.
8 Departments shall reimburse the auditor of state for any
9 actions taken by the auditor of state to determine whether the
10 entity has substantially complied with the laws, rules,
11 regulations, and contractual agreements governing the funds
12 provided by the department for costs expended after the date
13 the auditor of state notifies the department of an issue
14 involving substantial compliance pursuant to the requirements
15 of this subsection.

16 Sec. 10. NEW SECTION. 11.37 ACCESS TO CONFIDENTIAL
17 INFORMATION.

18 1. The auditor of state, when conducting any audit or
19 review required or permitted by this chapter, shall at all
20 times have access to all information, records,
21 instrumentalities, and properties used in the performance of
22 the audited or reviewed entities' statutory duties or
23 contractual responsibilities. All audited or reviewed
24 entities shall cooperate with the auditor of state in the
25 performance of the audit or review and make available the
26 information, records, instrumentalities, and properties upon
27 the request of the auditor of state.

28 2. If the information, records, instrumentalities, and
29 properties sought by the auditor of state are required by law
30 to be kept confidential, the auditor of state shall have
31 access to the information, records, instrumentalities, and
32 properties, but shall maintain the confidentiality of all such
33 information and is subject to the same penalties as the lawful
34 custodian of the information for dissemination of the
35 information. However, the auditor of state shall not have

1 access to the income tax returns of individuals.

2 DIVISION III

3 CITIZENS' AIDE DUTIES

4 Sec. 11. Section 2C.1, subsection 2, Code 2005, is amended
5 to read as follows:

6 2. a. "Agency" means ~~all-governmental-entities,~~
7 ~~departments,-boards,-commissions,-councils-or-institutions,~~ a
8 department, board, commission, council, institution, or other
9 governmental body of the state or a political subdivision of
10 the state, a legal or administrative entity created pursuant
11 to chapter 28E, a private entity providing individualized or
12 public services under a contract with a governmental body of
13 the state or a political subdivision of the state, and any
14 officer, employee, or member thereof acting or purporting to
15 act in the exercise of official duties, ~~but-it~~ or providing
16 services enumerated in a contract.

17 b. "Agency" does not ~~include~~ mean:

18 a- (1) Any court or judge or appurtenant judicial staff.

19 b- (2) The members, committees, or permanent or temporary
20 staffs of the Iowa general assembly.

21 c- (3) The governor of Iowa or the governor's personal
22 staff.

23 d- (4) Any instrumentality formed pursuant to an
24 interstate compact and answerable to more than one state.

25 (5) Any agricultural commodity promotional board subject
26 to a producer referendum.

27 Sec. 12. Section 2C.9, subsection 1, Code 2005, is amended
28 to read as follows:

29 1. Investigate, on complaint or on the citizens' aide's
30 own motion, any administrative action of any agency, without
31 regard to the finality of the administrative action, except
32 that the citizens' aide shall not investigate the complaint of
33 an employee of an agency in regard to that employee's
34 employment relationship with the agency except as otherwise
35 provided by this section. A communication or receipt of

1 information made pursuant to the powers prescribed in this
2 chapter shall not be considered an ex parte communication as
3 described in the provisions of section 17A.17.

4 Sec. 13. Section 2C.9, Code 2005, is amended by adding the
5 following new subsections:

6 NEW SUBSECTION. 7. Provide administrative and
7 investigative assistance to the whistleblower board
8 established in section 2E.1.

9 NEW SUBSECTION. 8. Provide information to state employees
10 and their employers relating to the rights of employees to
11 disclose information under section 8A.417, subsection 4, and
12 section 70A.28, subsection 1 or 2.

13 Sec. 14. NEW SECTION. 2E.1 INDEPENDENT WHISTLEBLOWER
14 BOARD -- ESTABLISHED -- DUTIES.

15 1. An Iowa whistleblower board is established as an
16 independent agency within the office of citizens' aide. The
17 board shall administer this chapter and investigate complaints
18 and conduct hearings relating to the disclosure of information
19 by state employees as governed by sections 8A.417 and 70A.28.

20 2. The board shall consist of three members, who shall not
21 be state employees or employees of an entity receiving state
22 funds, and shall be balanced as to political affiliation as
23 provided in section 69.16. One member shall be appointed by
24 the legislative council, one member shall be appointed by the
25 majority leader of the senate in consultation with the
26 minority leader of the senate, and one member shall be
27 appointed by the speaker of the house in consultation with the
28 minority leader of the house.

29 3. Members shall serve at the pleasure of the appointing
30 authority but in no event for longer than a two-year term
31 which shall expire upon the convening of the following general
32 assembly, or when the appointee's successor is appointed,
33 whichever occurs later. A member of the board may be
34 reappointed to serve additional terms on the board.

35 4. The board shall annually elect one member to serve as

1 the chairperson of the board and one member to serve as vice
2 chairperson. The vice chairperson shall act as the
3 chairperson in the absence or disability of the chairperson or
4 in the event of a vacancy in that office.

5 5. Members of the board shall receive a per diem as
6 specified in section 7E.6 while conducting business of the
7 board, and payment of actual and necessary expenses incurred
8 in the performance of their duties.

9 6. The office of the citizens' aide shall provide
10 administrative and legal support to the board.

11 7. The board shall adopt rules pursuant to chapter 17A as
12 necessary to carry out the purposes of this chapter.

13 Sec. 15. NEW SECTION. 2E.2 COMPLAINT PROCEDURES.

14 1. A state employee who is discharged, suspended, demoted,
15 or otherwise reduced in pay and who believes the disciplinary
16 action was in violation of section 8A.417, subsection 4, or
17 section 70A.28, subsection 1 or 2, may appeal the disciplinary
18 action to the board created in section 2E.1 within thirty days
19 following the effective date of the action. The board shall
20 prescribe and provide complaint forms for this purpose. A
21 complaint must include the name and address of the
22 complainant, a statement of the facts believed to be true that
23 form the basis of the complaint, including the sources of
24 information and approximate dates of the action alleged, and a
25 certification by the complainant under penalty of perjury that
26 the facts stated to be true are true to the best of the
27 complainant's knowledge.

28 2. The board staff shall review the complaint to determine
29 if the complaint is sufficient as to form. If the complaint
30 is deficient as to form, the complaint shall be returned to
31 the complainant with a statement of the deficiency and an
32 explanation describing how the deficiency may be cured. If
33 the complaint is sufficient as to form, the complaint shall be
34 referred for legal review.

35 3. Unless the chairperson of the board concludes that

1 immediate notification would prejudice a preliminary
2 investigation or subject the complainant to an unreasonable
3 risk, the board shall mail a copy of the complaint to the
4 subject of the complaint within three working days of the
5 acceptance of the complaint. If a determination is made by
6 the chairperson not to mail a copy of the complaint to the
7 subject of the complaint within the specified three working
8 days, the board shall approve and establish the time and
9 conditions under which the subject will be informed of the
10 filing and contents of the complaint.

11 4. Upon completion of legal review, the chairperson of the
12 board shall be advised whether, in the opinion of the legal
13 advisor, the complaint states an allegation which is legally
14 sufficient. A legally sufficient allegation must allege facts
15 that would establish a violation of section 8A.417, subsection
16 4, or section 70A.28, subsection 1 or 2.

17 5. If the board determines that none of the allegations
18 contained in the complaint are legally sufficient, the
19 complaint shall be dismissed. The complainant shall be sent a
20 notice of dismissal stating the reason or reasons for the
21 dismissal. If a copy of the complaint was sent to the subject
22 of the complaint, a copy of the notice of dismissal shall be
23 sent to the subject of the complaint. If the board determines
24 that any allegation contained in the complaint is legally
25 sufficient, the complaint shall be referred to the board staff
26 for investigation of any legally sufficient allegations.

27 6. The purpose of an investigation by the board's staff is
28 to determine whether there is probable cause to believe that
29 there has been a violation of section 8A.417, subsection 4, or
30 section 70A.28, subsection 1 or 2. To facilitate the conduct
31 of investigations, the board may issue and seek enforcement of
32 subpoenas requiring the attendance and testimony of witnesses
33 and subpoenas requiring the production of books, papers,
34 records, and other real evidence relating to the matter under
35 investigation. Upon the request of the board, an appropriate

1 county attorney or the attorney general shall assist the staff
2 of the board in its investigation.

3 7. If the board determines on the basis of an
4 investigation by board staff that there is probable cause to
5 believe the existence of facts that would establish a
6 violation of section 8A.417, subsection 4, or section 70A.28,
7 subsection 1 or 2, the board may issue a statement of charges
8 and notice of a contested case proceeding to the complainant
9 and to the person who is the subject of the complaint, in the
10 manner provided for the issuance of statements of charges
11 under chapter 17A. If the board determines on the basis of an
12 investigation by staff that there is no probable cause to
13 believe that a violation has occurred, the board shall close
14 the investigation, dismiss any related complaint, and the
15 person making the complaint and the subject of the complaint
16 shall be notified of the dismissal.

17 8. At any stage during the investigation or after the
18 initiation of a contested case proceeding, the board may
19 approve a settlement regarding an alleged violation. Terms of
20 a settlement shall be reduced to writing and be available for
21 public inspection. An informal settlement may provide for any
22 remedy specified in section 2E.4. However, the board shall
23 not approve a settlement unless the board determines that the
24 terms of the settlement are in the public interest and are
25 consistent with the purposes of section 8A.417, subsection 4,
26 and section 70A.28, subsection 1 or 2.

27 9. A complaint shall be a public record, but some or all
28 of the contents may be treated as confidential under section
29 22.7, subsection 18, as if the complainant were a person
30 outside of government, to the extent necessary under
31 subsection 3 of this section. If the complainant, the person
32 who provides information to the board, or the person who is
33 the subject of an investigation publicly discloses the
34 existence of an investigation, the board may publicly confirm
35 the existence of the disclosed formal complaint or

1 investigation and, in the board's discretion, make the
2 complaint or the informal referral public, as well as any
3 other documents that were issued by the board to any party to
4 the investigation. However, investigative materials may be
5 furnished to the appropriate law enforcement authorities by
6 the board at any time. Upon the commencement of a contested
7 case proceeding by the board, all investigative material
8 relating to that proceeding shall be made available to the
9 subject of the proceeding. The entire record of any contested
10 case proceeding initiated under this section shall be a public
11 record.

12 Sec. 16. NEW SECTION. 2E.3 CONTESTED CASE PROCEEDINGS.

13 1. Contested case proceedings initiated as a result of a
14 complaint filed with the whistleblower board under this
15 chapter shall be conducted in accordance with the requirements
16 of chapter 17A. A preponderance of the evidence shall be
17 required to support a finding that a person has violated
18 section 8A.417, subsection 4, or section 70A.28, subsection 1
19 or 2. The case in support of the statement of charges shall
20 be presented at the hearing by one of the board's attorneys or
21 staff unless, upon the request of the board, the charges are
22 prosecuted by another legal counsel designated by the attorney
23 general.

24 2. Hearings held pursuant to this chapter shall be heard
25 by a quorum of the board, unless the board designates a board
26 member or an administrative law judge to preside at the
27 hearing. If a quorum of the board does not preside at the
28 hearing, the board member or administrative law judge shall
29 make a proposed decision. The board or presiding board member
30 may be assisted by an administrative law judge in the conduct
31 of the hearing and the preparation of a decision.

32 3. Upon a finding by the board that the party charged has
33 violated section 8A.417, subsection 4, or section 70A.28,
34 subsection 1 or 2, the board may impose any penalty provided
35 for by section 2E.4. Upon a final decision of the board

1 finding that the party charged has not violated section
2 8A.417, subsection 4, or section 70A.28, subsection 1 or 2,
3 the complaint shall be dismissed and the party charged and the
4 original complainant, if any, shall be notified.

5 4. The right of an appropriate county attorney or the
6 attorney general to commence and maintain a district court
7 prosecution for criminal violations of the law is unaffected
8 by any proceedings under this section.

9 5. The board shall adopt rules, pursuant to chapter 17A,
10 establishing procedures to administer this section.

11 Sec. 17. NEW SECTION. 2E.4 PENALTIES -- RECOMMENDED
12 ACTIONS.

13 1. The board, after a hearing and upon a finding that a
14 violation of section 8A.417, subsection 4, or section 70A.28,
15 subsection 1 or 2, has occurred, may do one or more of the
16 following:

17 a. Issue an order requiring the violator to cease and
18 desist from the violation found and to take any remedial
19 action deemed appropriate by the board.

20 b. Reinstate the aggrieved state employee, with or without
21 back pay, and provide such other equitable relief the board
22 deems appropriate, including the awarding of any attorney fees
23 and costs.

24 2. At any stage during an investigation, the board may
25 resolve the matter by admonishment to the alleged violator or
26 by any other means not specified in subsection 1 as a
27 posthearing remedy.

28 3. If a person fails to comply with an action of the board
29 under subsection 1, the board may petition the Polk county
30 district court for an order for enforcement of the action of
31 the board. The enforcement proceeding shall be conducted as
32 provided in section 2E.5.

33 Sec. 18. NEW SECTION. 2E.5 JUDICIAL REVIEW --
34 ENFORCEMENT.

35 Judicial review of the actions of the board may be sought

1 in accordance with chapter 17A. Judicial enforcement of
2 orders of the board may be sought in accordance with chapter
3 17A.

4 Sec. 19. Section 70A.28, subsection 5, Code 2005, is
5 amended to read as follows:

6 5. Subsection Subsections 1 and 2 may be enforced through
7 a-civil-action filing a complaint with the whistleblower board
8 as provided in chapter 2E.

9 ~~a--A-person-who-violates-subsection-2-is-liable-to-an~~
10 ~~aggrieved-employee-for-affirmative-relief-including~~
11 ~~reinstatement,with-or-without-back-pay,or-any-other~~
12 ~~equitable-relief-the-court-deems-appropriate,including~~
13 ~~attorney-fees-and-costs.~~

14 ~~b--When-a-person-commits,is-committing,or-proposes-to~~
15 ~~commit-an-act-in-violation-of-subsection-2,an-injunction-may~~
16 ~~be-granted-through-an-action-in-district-court-to-prohibit-the~~
17 ~~person-from-continuing-such-acts.--The-action-for-injunctive~~
18 ~~relief-may-be-brought-by-an-aggrieved-employee-or-the-attorney~~
19 ~~general.~~

20 DIVISION IV

21 LEGISLATIVE OVERSIGHT

22 Sec. 20. Section 2.45, subsection 5, Code 2005, is amended
23 by adding the following new paragraph:

24 NEW PARAGRAPH. c. The committee shall implement a
25 systematic process of reviewing the reports required to be
26 filed with the legislative services agency pursuant to section
27 8F.4.

28 EXPLANATION

29 This bill concerns governmental accountability. The bill
30 contains provisions governing service contracts that expend
31 government funds, the authority of the auditor of state to
32 review entities receiving state or federal funds, and the
33 authority of the citizens' aide (ombudsman) to receive
34 complaints relative to private entities providing services
35 under contract with a governmental entity and employment-

1 related complaints concerning disclosures of information, and
2 the authority of the legislative oversight committee.

3 Division I of the bill concerns government accountability
4 relating to service contracts and oversight requirements for
5 agencies subject to the accountable government Act in Code
6 chapter 8E.

7 New Code chapter 8F establishes requirements governing any
8 service contract between a governmental entity and an
9 intergovernmental or private entity that involves federal or
10 state funds.

11 New Code section 8F.2 defines "oversight agency" as any
12 state unit or state government that contracts with and
13 disburses government money to a recipient entity for a service
14 contract. The bill defines a "service contract" as one
15 primarily for services in which the value of the contract or
16 contracts exceeds \$500,000. The bill also defines a
17 "recipient entity" as an intergovernmental entity or private
18 agency that receives state or federal moneys from an oversight
19 agency on a service contract. Exclusions from the definitions
20 of oversight "agency" and "service contract" are included in
21 the bill.

22 New Code section 8F.3 provides information a recipient
23 entity shall certify that it can make available to the
24 oversight agency as a condition of entering into a service
25 contract with an oversight agency. The bill requires that the
26 information include documentation as to the governance of the
27 entity, provision of training to the governing body of the
28 entity as to its duties and obligations as a governing body,
29 information relative to the performances and compensation of
30 management employees and accounting practices, ethical and
31 professional standards for the entity including provisions on
32 nepotism and conflicts of interest, and a whistleblower policy
33 consistent with rules governing state employees. The new Code
34 section also requires the recipient entity to certify that the
35 entity is in full compliance with all applicable laws and

1 regulations including the requirements of this new Code
2 chapter.

3 New Code section 8F.4 provides additional ongoing
4 requirements for a recipient entity. The Code section
5 requires the recipient entity to submit an annual report to
6 the oversight agency as well as to the legislative services
7 agency which must include financial information, any
8 information concerning any external audits conducted in the
9 previous year, as well as any changes in the information
10 required pursuant to new Code section 8F.3. The new Code
11 section provides an exception to this annual report
12 requirement if the recipient entity is already required to
13 submit similar information pursuant to statute or rule so long
14 as this information is also submitted to the legislative
15 services agency. The new Code section further provides that
16 the recipient entity certify the accuracy of the information
17 in the annual report and provide supplemental information to
18 the oversight agency or the legislative services agency upon
19 request.

20 New Code section 8F.5 provides that an oversight agency has
21 the authority to terminate any contract if the recipient
22 entity fails to comply with the requirements of this new Code
23 chapter and that the contract contain provisions providing for
24 the recovery of government moneys expended if the entity fails
25 to comply.

26 Code section 8E.208, concerning performance measurements,
27 is amended to provide that performance measurements include an
28 assessment of whether agencies have adequate control
29 procedures as to whether public resources are being used
30 effectively.

31 Code section 28E.5, concerning requirements for entities
32 created under that chapter, is amended to provide that the
33 entity created shall comply with the requirements of Code
34 chapters 21 (open meetings) and 22 (public records) to the
35 same extent as a governmental body under those chapters. In

1 addition, the entity is required to publish proceedings
2 conducted by an entity and shall make all salaries of its
3 employees public.

4 This division of the bill also provides that the
5 requirements for service contracts apply to such contracts
6 entered into or renewed on or after October 1, 2006.

7 Division II of the bill concerns the authority of the
8 auditor of state to conduct reviews of entities receiving
9 state or federal funds.

10 Code section 11.36 is stricken and rewritten and provides
11 that the auditor of state may, at the request of a department
12 or upon a determination by the auditor of state, review
13 information, and submit a report, covering the receipt and
14 expenditure of state or federal funds provided by a department
15 to any other entity to determine if the receipt and
16 expenditure of those funds by the entity is consistent with
17 the requirements governing those funds. The new Code section
18 provides that the applicable department reimburse the auditor
19 of state for the cost of providing the review required by this
20 section.

21 New Code section 11.37 provides that the auditor of state
22 has access to all information used by the auditor and that if
23 such information is otherwise confidential, the auditor shall
24 be entitled to review the information.

25 Division III of the bill expands the authority of the
26 office of citizens' aide. This division of the bill expands
27 the definition of the term "agency" within Code chapter 2C,
28 which governs the authority of the office of citizens' aide.
29 The division defines "agency" to include legal or
30 administrative entities created pursuant to Code chapter 28E,
31 private entities providing individualized or public services
32 pursuant to a contract with a governmental body of the state
33 or local government, and any officer, employee, or member of
34 any of those entities who is performing official duties or
35 providing services enumerated in a contract. The expansion of

1 the definition brings the activities of those entities and
2 individuals who are performing services pursuant to a contract
3 with state or local government under the jurisdiction of the
4 office of citizens' aide under Code section 2C.9.

5 In addition, Code section 2C.9, concerning the powers of
6 the citizens' aide, is amended to provide that the citizens'
7 aide provide administrative and investigative assistance to
8 the whistleblower board created by the bill and to provide
9 information to state employees and employers relative to the
10 rights of employees to disclose certain information.

11 New Code chapter 2E is created to establish a whistleblower
12 board.

13 New Code section 2E.1 establishes the whistleblower board
14 and provides that it is an independent agency within the
15 office of citizens' aide. The board shall investigate
16 complaints and conduct hearings relating to the disclosure of
17 certain information by state employees. The board consists of
18 three members none of whom shall be a state employee or an
19 employee of an entity receiving state funds. One member shall
20 be appointed by the legislative council, one member shall be
21 appointed by the majority leader of the senate in consultation
22 with the minority leader of the senate, and one member shall
23 be appointed by the speaker of the house in consultation with
24 the minority leader of the house. Members shall serve no
25 longer than a two-year term which shall expire at the
26 convening of the following general assembly. Members of the
27 board shall receive a per diem while conducting the business
28 of the board.

29 New Code section 2E.2 establishes the complaint procedure
30 for state employees who believe that adverse employment action
31 has been taken against them for disclosing information where
32 that action constitutes a violation of Code section 8A.417 or
33 70A.28. The section requires that an employee shall file a
34 complaint within 30 days of the adverse employment action.
35 The section provides that the board shall make an initial

1 determination as to the legal sufficiency of the complaint and
2 shall dismiss the complaint if it is not legally sufficient.
3 If the allegations are legally sufficient, the board shall
4 investigate the complaint. If after the investigation the
5 board determines there is probable cause that a violation has
6 occurred, the board shall conduct a contested case proceeding
7 relative to the complaint.

8 New Code section 2E.3 establishes the requirements of a
9 contested case proceeding conducted by the board and provides
10 that they shall be conducted in accordance with the
11 requirements of Code chapter 17A.

12 New Code section 2E.4 provides the penalties the board may
13 impose if a violation is found. The section allows the board
14 to order the violator to cease and desist from the violation
15 found and to reinstate the aggrieved employee with or without
16 back pay. The section also allows the board to grant any
17 other equitable relief.

18 New Code section 2E.5 allows for judicial review of the
19 board action in accordance with the requirements of Code
20 chapter 17A.

21 Code section 70A.28, subsection 5, is amended to require a
22 state employee to seek relief for a violation of this section
23 by filing a complaint with the whistleblower board created by
24 the bill. The bill strikes the ability to file a civil action
25 under this section for a violation.

26 Division IV of the bill provides that the oversight
27 committee of the legislative council review the annual
28 reports, or substitute reports, required to be filed by a
29 recipient entity pursuant to the requirements of Code section
30 8F.4 created in the bill.

31
32
33
34
35

SENATE FILE 2410

S-5274

1 Amend Senate File 2410 as follows:

2 1. Page 19, by inserting after line 27 the
3 following:

4 "DIVISION

5 HEALTH CARE WORKERS -- DISCLOSURE OF INFORMATION

6 Sec. ____ . NEW SECTION. 147.105 PATIENT

7 PROTECTION -- HEALTH CARE WORKERS -- REPORT OF ADVERSE
8 EVENTS.

9 1. DEFINITIONS. As used in this section, unless
10 the context otherwise requires:

11 a. "Health care worker" means any individual
12 employed by or under contract with a hospital, health
13 care provider, or health care agency to provide health
14 care services.

15 b. "Professional standards of care" means
16 authoritative statements that describe a level of care
17 or performance common to the profession by which the
18 quality of professional practice can be judged and
19 which reflect the values and priorities of the
20 profession.

21 2. A health care worker, who reasonably believes a
22 particular practice the health care worker has
23 observed occurring at the health care worker's place
24 of employment, based on the health care worker's
25 professional standards of care or professional code of
26 ethics, is a violation of health and safety laws or a
27 breach of public safety that may lead to harm to
28 patients, consumers, or citizens, may report the
29 information relating to the violation or breach within
30 fourteen days of its occurrence to the health care
31 worker's supervisor or employer, in order that
32 corrective action can be taken. The health care
33 worker shall be protected against reprisals or
34 retaliatory or punitive action by the individual or
35 institution receiving such a report.

36 3. If after a reasonable period of time for
37 correction of the violation or breach reported
38 pursuant to subsection 2, the health care worker
39 continues to see the particular practice occurring in
40 the workplace giving rise to the report, the health
41 care worker may disclose information to the licensing
42 board, the department, the division of insurance in
43 the department of commerce, a member or employee of
44 the general assembly, the attorney general, a
45 state-mandated health information collection agency,
46 any other public official or law enforcement agency,
47 federal government agency or program, the governing
48 board of the health care worker's employer or
49 institution, the health care worker's professional
50 association, or the media, and shall be protected

S-5274

1 against reprisals or retaliatory or punitive actions
2 by the individual or institution if disclosure of the
3 information is not otherwise prohibited by statute and
4 if the information meets any of the following
5 requirements:

6 a. Constitutes state-mandated health data required
7 to be submitted to state agencies.

8 b. Informs state agencies or entities of
9 violations of state health, safety, occupational
10 health, licensure, or insurance laws.

11 c. Is reasonably believed by the health care
12 worker to be a violation of health and safety laws or
13 a breach of public safety that may lead to harm to
14 patients, consumers, or citizens, based upon the
15 health care worker's professional standards of care or
16 professional code of ethics.

17 A health care worker making a disclosure which
18 violates any provision of the federal Health Insurance
19 Portability and Accountability Act, Pub. L. No.
20 104-191, shall not be entitled to protection pursuant
21 to this section nor entitled to civil remedies which
22 might otherwise be available pursuant to subsection 7.

23 4. A health care worker disclosing in good faith
24 the information described in subsections 2 and 3 shall
25 be presumed to have established a prima facie case
26 showing a violation of subsection 2 or 3 by the health
27 care worker's employer if the individual or
28 institution employing the health care worker knows or
29 has reason to know of the disclosure, and if
30 subsequent to and as a result of the disclosure, one
31 or more of the following actions were initiated by the
32 employer:

33 a. Discharge of the health care worker from
34 employment.

35 b. Failure by the employer to take action
36 regarding a health care worker's appointment to,
37 promotion or proposed promotion to, or receipt of any
38 advantage or benefit in the health care worker's
39 position of employment.

40 c. Any adverse change to the health care worker's
41 terms or conditions of employment or any
42 administrative, civil, or criminal action or other
43 effort that diminished the professional competence,
44 reputation, stature, or marketability of the health
45 care worker.

46 An employer shall have the burden of proof
47 regarding any attempt to show that actions taken
48 pursuant to this subsection were for a legitimate
49 business purpose.

50 5. If an individual or institution employing a

1 health care worker is determined to have violated
 2 state health, safety, or occupational health and
 3 health licensure laws or regulations, or professional
 4 standards of care or a professional code of ethics,
 5 after a disclosure pursuant to subsection 2 or 3
 6 results in an action as described in subsection 4,
 7 such a determination shall create a presumption of
 8 retaliation or reprisal against the health care worker
 9 in violation of this section. Disclosure of a
 10 reasonable belief that violations of health and safety
 11 laws or breaches of public safety have occurred that
 12 have caused or have a potential to cause harm to
 13 patients, consumers, and citizens shall immediately
 14 trigger the protection afforded by this section.

15 6. A person who violates this section commits a
 16 simple misdemeanor and is subject to a civil action as
 17 follows:

18 a. A person who violates this section is liable to
 19 an aggrieved health care worker for affirmative
 20 relief, including reinstatement with or without back
 21 pay, or any other equitable relief the court deems
 22 appropriate, including attorney fees and costs,
 23 punitive or exemplary damages, and public notice of
 24 the retaliation or reprisal undertaken against the
 25 health care worker through publication in an official
 26 newspaper in the city or county.

27 b. When a person commits, is committing, or
 28 proposes to commit an act in violation of this
 29 section, an injunction may be granted through an
 30 action in district court to prohibit the person from
 31 continuing such acts. The action for injunctive
 32 relief may be brought by an aggrieved health care
 33 worker or by the county attorney.

34 7. In addition to any other penalties applicable
 35 to a person who violates this section, an individual,
 36 institution, or organization employing a person who
 37 violates this section shall be subject to a civil
 38 penalty in the amount of one thousand dollars per
 39 violation."

40 2. Title page, line 6, by inserting before the
 41 words "and the" the following: "providing a
 42 prohibition against reprisals related to health care
 43 workers' disclosures of information,".

44 3. By renumbering as necessary.

By MICHAEL E. GRONSTAL

SENATE FILE 2410

S-5276

1 Amend Senate File 2410 as follows:

2 1. Page 1, line 34, by inserting after the word
3 "thereof." the following: "'Intergovernmental entity"
4 does not include an organization established or
5 agreement made in accordance with chapter 28E between
6 state agencies."

7 2. Page 2, line 31, by striking the words
8 "transportation services" and inserting the following:
9 "services related to transportation".

10 3. Page 3, line 21, by inserting after the word
11 "services" the following: "provided by a person".

12 4. Page 3, by inserting after line 26 the
13 following:

14 "(12) A contract with outside counsel or special
15 counsel executed by the executive council pursuant to
16 section 13.3 or 13.7.

17 (13) A contract that is subject to competitive
18 bidding for the construction, reconstruction,
19 improvement, or repair of a public building or public
20 improvement."

21 5. Page 4, line 17, by striking the figure
22 "501(c)(3)" and inserting the following: "501(c)".

23 6. Page 6, line 22, by striking the word "under".

24 7. Page 6, by striking lines 23 through 26 and
25 inserting the following: "and provides a copy of
26 the".

27 8. Page 7, line 23, by striking the word
28 "supplemental".

29 9. By striking page 8, line 14, through page 9,
30 line 1, and inserting the following:

31 "Sec. ____ . Section 28E.6, Code 2005, is amended to
32 read as follows:

33 28E.6 ADDITIONAL PROVISIONS.

34 1. If the agreement does not establish a separate
35 legal entity to conduct the joint or co-operative
36 undertaking, the agreement shall also include:

37 ~~1-~~ a. Provision for an administrator or a joint
38 board responsible for administering the joint or
39 co-operative undertaking. In the case of a joint
40 board, public agencies party to the agreement shall be
41 represented.

42 ~~2-~~ b. The manner of acquiring, holding and
43 disposing of real and personal property used in the
44 joint or co-operative undertaking.

45 2. The entity created or the administrator or
46 joint board specified in the agreement shall be a
47 governmental body for purposes of chapter 21 and a
48 government body for purposes of chapter 22 unless the
49 entity created or agreement includes public agencies
50 from more than one state.

S-5276

1 3. All proceedings of each regular, adjourned, or
2 special meeting of the entity created or the
3 administrator or joint board specified in the
4 agreement, including the schedule of bills allowed,
5 shall be published after adjournment of the meeting in
6 a newspaper of general circulation within the
7 geographic area served by the entity created or the
8 administrator or joint board specified in the
9 agreement. The entity created or the administrator or
10 joint board specified in the agreement shall furnish a
11 copy of the proceedings to be published to the
12 newspaper within one week following adjournment of the
13 meeting. The publication of the schedule of bills
14 allowed shall include a list of all salaries paid for
15 services performed, showing the name of the person or
16 firm performing the service and the amount paid.
17 However, the names and gross salaries of persons
18 regularly employed by the entity created or the
19 administrator or joint board specified in the
20 agreement shall only be published annually. This
21 subsection shall not apply if the entity or the
22 administrator or joint board specified in the
23 agreement includes public agencies from more than one
24 state.

25 Sec. ____ . ELECTRONIC SUBMISSION OF CONTRACTS --
26 REPORT. The department of administrative services
27 shall submit a report concerning steps necessary to
28 provide for the electronic submission and retention of
29 contracts by the department. The department shall
30 submit the report, with its findings and
31 recommendations, to the general assembly by December
32 1, 2006. The report shall identify any costs
33 associated with implementing the recommendations of
34 the report."

35 10. Page 9, line 8, by striking the figure
36 "28E.5" and inserting the following: "28E.6".

37 11. Page 9, line 15, by inserting after the word
38 "review" the following: ", during normal business
39 hours upon reasonable notice of at least twenty-four
40 hours,".

41 12. Page 9, line 32, by striking the words "'b",
42 or "c"' and inserting the following: "or "b"".

43 13. Page 12, line 3, by inserting after the word
44 "DUTIES" the following: "-- DISCLOSURES OF
45 INFORMATION".

46 14. Page 12, by striking lines 4 through 26.

47 15. Page 12, line 35, by striking the word
48 "section" and inserting the following: "chapter".

49 16. By striking page 13, line 4, through page 19,
50 line 19, and inserting the following:

1 "Sec. _____. NEW SECTION. 2C.11A SUBJECTS FOR
2 INVESTIGATIONS -- DISCLOSURES OF INFORMATION.

3 The office of citizens' aide shall investigate a
4 complaint filed by an employee who is not a merit
5 system employee or an employee covered by a collective
6 bargaining agreement and who alleges that adverse
7 employment action has been taken against the employee
8 in violation of section 70A.28, subsection 2. A
9 complaint filed pursuant to this section shall be made
10 within thirty calendar days following the effective
11 date of the adverse employment action. The citizens'
12 aide shall investigate the matter and shall issue
13 findings relative to the complaint in an expeditious
14 manner.

15 Sec. _____. Section 70A.28, subsection 2, Code 2005,
16 is amended to read as follows:

17 2. A person shall not discharge an employee from
18 or take or fail to take action regarding an employee's
19 appointment or proposed appointment to, promotion or
20 proposed promotion to, or any advantage in, a position
21 in a state employment system administered by, or
22 subject to approval of, a state agency as a reprisal
23 for a failure by that employee to inform the person
24 that the employee made a disclosure of information
25 permitted by this section, or for a disclosure of any
26 information by that employee to a member or employee
27 of the general assembly, a disclosure of information
28 to the office of citizens' aide, or a disclosure of
29 information to any other public official or law
30 enforcement agency if the employee reasonably believes
31 the information evidences a violation of law or rule,
32 mismanagement, a gross abuse of funds, an abuse of
33 authority, or a substantial and specific danger to
34 public health or safety. However, an employee may be
35 required to inform the person that the employee made a
36 disclosure of information permitted by this section if
37 the employee represented that the disclosure was the
38 official position of the employee's immediate
39 supervisor or employer.

40 Sec. _____. Section 70A.28, Code 2005, is amended by
41 adding the following new subsection:

42 NEW SUBSECTION. 5A. Subsection 2 may also be
43 enforced by an employee through an administrative
44 action pursuant to the requirements of this subsection
45 if the employee is not a merit system employee or an
46 employee covered by a collective bargaining agreement.
47 An employee eligible to pursue an administrative
48 action pursuant to this subsection who is discharged,
49 suspended, demoted, or otherwise reduced in pay and
50 who believes the adverse employment action was taken

1 as a result of the employee's disclosure of
2 information that was authorized pursuant to subsection
3 2, may file an appeal of the adverse employment action
4 with the public employment relations board within
5 thirty calendar days following the later of the
6 effective date of the action or the date a finding is
7 issued to the employee by the office of the citizens'
8 aide pursuant to section 2C.11A. The findings issued
9 by the citizens' aide may be introduced as evidence
10 before the public employment relations board. The
11 employee has the right to a hearing closed to the
12 public, but may request a public hearing. The hearing
13 shall otherwise be conducted in accordance with the
14 rules of the public employment relations board and the
15 Iowa administrative procedure Act, chapter 17A. If
16 the public employment relations board finds that the
17 action taken by the person appointing the employee was
18 in violation of subsection 2, the employee may be
19 reinstated without loss of pay or benefits for the
20 elapsed period, or the public employment relations
21 board may provide other appropriate remedies.
22 Decisions by the public employment relations board
23 constitute final agency action."

24 17. Title page, line 6, by striking the words
25 "establishment of a whistleblower board" and inserting
26 the following: "employment rights of employees making
27 a disclosure of information".

28 18. By renumbering as necessary.

By THOMAS G. COURTNEY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

DIVISION I

GOVERNMENT ACCOUNTABILITY

Section 1. NEW SECTION. 8F.1 PURPOSE.

This chapter is intended to create mechanisms to most effectively and efficiently monitor the utilization of public moneys by providing the greatest possible accountability for the expenditure of public moneys.

Sec. 2. NEW SECTION. 8F.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Agency" means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in section 7E.4, including but not limited to each principal central department enumerated in section 7E.5. However, "agency" does not mean the Iowa public employees' retirement system created under chapter 97B, the public broadcasting division of the department of education created under section 256.81, the statewide fire and police retirement system created under chapter 411, or an agricultural commodity promotion board subject to a producer referendum.

2. "Compensation" means payment of, or agreement to pay, any money, thing of value, or financial benefit conferred in return for labor or services rendered by an officer, employee, or other person plus the value of benefits including but not limited to casualty, disability, life, or health insurance, other health or wellness benefits, vacations, holidays, and sick leave, severance payments, retirement benefits, and deferred compensation.

3. "Intergovernmental entity" means any separate organization established in accordance with chapter 28E or established by any other agreement between an agency and any other governmental entity, whether federal, state, or local, and any department, division, unit or subdivision thereof. "Intergovernmental entity" does not include an organization

1 established or agreement made in accordance with chapter 28E
2 between state agencies.

3 4. "Oversight agency" means an agency that contracts with
4 and disburses state or federal moneys to a recipient entity.

5 5. "Private agency" means an individual or any form of
6 business organization, including a nonprofit organization,
7 authorized under the laws of this state or any other state or
8 under the laws of any foreign jurisdiction.

9 6. "Recipient entity" means an intergovernmental entity or
10 a private agency that enters into a service contract with an
11 oversight agency to provide services which will be paid for
12 with local governmental, state, or federal moneys.

13 7. "Service" or "services" means work performed for an
14 oversight agency or for its client.

15 8. a. "Service contract" means a contract for a service
16 or services when the predominant factor, thrust, and purpose
17 of the contract as reasonably stated is for the provision of
18 services. When there is a contract for goods and services and
19 the predominant factor, thrust, and purpose of the contract as
20 reasonably stated is for the provision or rendering of
21 services with goods incidentally involved, a service contract
22 exists. "Service contract" includes grants when the
23 predominant factor, thrust, and purpose of the contract
24 formalizing the grant is for the provision of services. For
25 purposes of this chapter, a service contract only exists when
26 an individual service contract or a series of service
27 contracts entered into between an oversight agency and a
28 recipient entity exceeds five hundred thousand dollars or when
29 the grant or contract together with other grants or contracts
30 awarded to the recipient entity by the oversight agency during
31 the oversight agency's fiscal year exceeds five hundred
32 thousand dollars in the aggregate.

33 b. "Service contract" does not mean any of the following:

34 (1) A contract that involves services related to
35 transportation or the construction, reconstruction,

1 improvement, repair, or maintenance of the transportation
2 system.

3 (2) A contract concerning the public safety peace
4 officers' retirement system created under chapter 97A, the
5 judicial retirement system governed by chapter 602, article 9,
6 or the deferred compensation plan established by the executive
7 council pursuant to section 509A.12.

8 (3) A contract for services provided for the operation,
9 construction, or maintenance of a public utility, combined
10 public utility, or a city enterprise as defined by section
11 384.24.

12 (4) A contract for dual party relay service required by
13 section 477C.3 or for the equipment distribution program
14 established under the authority of section 477C.4.

15 (5) A contract for services provided from resources made
16 available under Title XVIII, XIX, or XXI of the federal Social
17 Security Act.

18 (6) A contract for a court-appointed attorney.

19 (7) A contract with a federally insured financial
20 institution that is subject to mandatory periodic examinations
21 by a state or federal regulator.

22 (8) Any allocation of state or federal moneys by the
23 department of education to subrecipients on a formula or
24 noncompetitive basis.

25 (9) A contract for services provided by a person subject
26 to regulation under Title XIII of the Code.

27 (10) A contract for vendor services.

28 (11) A contract concerning an entity that has contracted
29 with the state and is licensed and regulated by the insurance
30 division of the department of commerce.

31 (12) A contract with outside counsel or special counsel
32 executed by the executive council pursuant to section 13.3 or
33 13.7.

34 (13) A contract that is subject to competitive bidding for
35 the construction, reconstruction, improvement, or repair of a

1 public building or public improvement.

2 9. "Vendor services" means services or goods provided by a
3 vendor that are required for the conduct of a state or federal
4 program for an organization's own use or for the use of
5 beneficiaries of the state or federal program and which are
6 ancillary to the operation of the state or federal program
7 under a service contract and not otherwise subject to
8 compliance requirements of the state or federal program. For
9 purposes of this subsection, "vendor" means a dealer,
10 distributor, merchant, or other seller which provides goods
11 and services within normal business operations, provides
12 similar goods or services to many different purchasers, and
13 operates in a competitive environment.

14 Sec. 3. NEW SECTION. 8F.3 CONTRACTUAL REQUIREMENTS.

15 1. As a condition of entering into a service contract with
16 an oversight agency, a recipient entity shall certify that the
17 recipient has the following information available for
18 inspection by the oversight agency and the legislative
19 services agency:

20 a. Information documenting the legal status of the
21 recipient entity, such as agreements establishing the entity
22 pursuant to chapter 28E or other intergovernmental agreements,
23 articles of incorporation, bylaws, or any other information
24 related to the establishment or status of the entity. In
25 addition, the information shall indicate whether the recipient
26 entity is exempt from federal income taxes under section
27 501(c), of the Internal Revenue Code.

28 b. Information regarding the training and education
29 received by the members of the governing body of the recipient
30 entity relating to the duties and legal responsibilities of
31 the governing body.

32 c. Information regarding the procedures used by the
33 governing body of the recipient entity to do all of the
34 following:

35 (1) Review the performance of management employees and

1 establish the compensation of those employees.

2 (2) Review the recipient entity's internal controls
3 relating to accounting processes and procedures.

4 (3) Review the recipient entity's compliance with the
5 laws, rules, regulations, and contractual agreements
6 applicable to its operations.

7 (4) Information regarding adopted ethical and professional
8 standards of operation for the governing body and employees of
9 the recipient entity and information concerning the
10 implementation of these standards and the training of
11 employees and members of the governing body on the standards.
12 The standards shall include but not be limited to a nepotism
13 policy which shall provide, at a minimum, for disclosure of
14 familial relationships among employees and between employees
15 and members of the governing body, policies regarding
16 conflicts of interest, standards of responsibility and
17 obedience to law, fairness, and honesty.

18 d. Information regarding any policies adopted by the
19 governing body of the recipient entity that prohibit taking
20 adverse employment action against employees of the recipient
21 entity who disclose information about a service contract to
22 the oversight agency, the auditor of state, or the office of
23 citizens' aide and that state whether those policies are
24 substantially similar to the protection provided to state
25 employees under section 70A.28. The information provided
26 shall state whether employees of the recipient entity are
27 informed on a regular basis of their rights to disclose
28 information to the oversight agency, the office of citizens'
29 aide, the auditor of state, or the office of the attorney
30 general and the telephone numbers of those organizations.

31 2. The certification required by this section shall be
32 signed by an officer and director of the recipient entity, two
33 directors of the recipient entity, or the sole proprietor of
34 the recipient entity, whichever is applicable, and shall state
35 that the recipient entity is in full compliance with all laws,

1 rules, regulations, and contractual agreements applicable to
2 the recipient entity and the requirements of this chapter.

3 3. Prior to entering into a service contract with a
4 recipient entity, the oversight agency shall determine whether
5 the recipient entity can reasonably be expected to comply with
6 the requirements of the service contract. If the oversight
7 entity is unable to determine whether the recipient entity can
8 reasonably be expected to comply with the requirements of the
9 service contract, the oversight entity shall request such
10 information from the recipient entity as described in
11 subsection 1 to make a determination. If the oversight agency
12 determines from the information provided that the recipient
13 entity cannot reasonably be expected to comply with the
14 requirements of the service contract, the oversight agency
15 shall not enter into the service contract.

16 Sec. 4. NEW SECTION. 8F.4 REPORTING REQUIREMENTS.

17 1. a. As a condition of continuing to receive state or
18 federal moneys through an oversight agency for a service
19 contract, a recipient entity shall file an annual report with
20 the oversight agency and with the legislative services agency
21 within ten months following the end of the recipient entity's
22 fiscal year.

23 b. However, the annual report shall not be required to be
24 filed under any of the following circumstances:

25 (1) The recipient entity reports information otherwise
26 required to be included in an annual report described in
27 subsection 2 to the oversight agency pursuant to federal or
28 state statutes or rules. The information otherwise required
29 to be reported to the oversight agency shall be filed with the
30 legislative services agency.

31 (2) The recipient entity is recognized by the Internal
* 32 Revenue Code as a nonprofit organization or entity and
33 provides a copy of the internal revenue service form 990 for
34 all fiscal years in which service contract revenues are
35 reported.

1 2. The annual report required to be filed pursuant to this
2 section shall contain the following:

3 a. Financial information relative to the expenditure of
4 state and federal moneys for the prior year pursuant to the
5 service contract. The financial information shall include but
6 is not limited to budget and actual revenue and expenditure
7 information for the year covered.

8 b. Financial information relating to service contracts
9 with the oversight agency during the preceding year, including
10 the costs by category to provide the contracted services.

11 c. Reportable conditions in internal control or material
12 noncompliance with provisions of laws, rules, regulations, or
13 contractual agreements included in external audit reports of
14 the recipient entity covering the preceding year.

15 d. Corrective action taken or planned by the recipient
16 entity in response to reportable conditions in internal
17 control or material noncompliance with laws, rules,
18 regulations, or contractual agreements included in external
19 audit reports covering the preceding year.

20 e. Any changes in the information submitted in accordance
21 with section 8F.3.

22 f. A certification signed by an officer and director of
23 the recipient entity, two directors of the recipient entity,
24 or the sole proprietor of the recipient entity, whichever is
25 applicable, stating the annual report is accurate and the
26 recipient entity is in full compliance with all laws, rules,
27 regulations, and contractual agreements applicable to the
28 recipient entity and the requirements of this chapter.

29 3. A recipient entity shall be required to submit such
*30 information as requested by the oversight agency or the
31 legislative services agency relating to the entity's
32 expenditure of state and federal moneys.

33 Sec. 5. NEW SECTION. 8F.5 ENFORCEMENT.

34 Any service contract awarded to a recipient entity shall
35 provide that the oversight agency may terminate the service

1 contract if the recipient entity, during the duration of the
2 contract, fails to comply with the requirements of this
3 chapter. In addition, the service contract shall provide a
4 mechanism for the forfeiture and recovery of state or federal
5 funds expended by a recipient entity in violation of the laws
6 applicable to the expenditure of the money or the requirements
7 of the service contract and this chapter.

8 Sec. 6. Section 8E.208, Code 2005, is amended by adding
9 the following new unnumbered paragraph:

10 NEW UNNUMBERED PARAGRAPH. Performance measurement is
11 essential to ensuring adequate accountability over public
12 resources and the exchange of public resources for desirable
13 and acceptable public benefits. Performance measurement must
14 include an assessment of whether agencies have adequate
15 control procedures in place, and whether those control
16 procedures are operating effectively, to determine that
17 agencies are receiving or providing services of adequate
18 quality, public resources are being used effectively and
19 efficiently, and public resources are being used for
20 appropriate and meaningful activities.

21 Sec. 7. Section 28E.6, Code 2005, is amended to read as
22 follows:

23 28E.6 ADDITIONAL PROVISIONS.

24 1. If the agreement does not establish a separate legal
25 entity to conduct the joint or co-operative undertaking, the
26 agreement shall also include:

27 1- a. Provision for an administrator or a joint board
28 responsible for administering the joint or co-operative
29 undertaking. In the case of a joint board, public agencies
30 party to the agreement shall be represented.

31 2- b. The manner of acquiring, holding and disposing of
32 real and personal property used in the joint or co-operative
33 undertaking.

34 2. The entity created or the administrator or joint board
35 specified in the agreement shall be a governmental body for

1 purposes of chapter 21 and a government body for purposes of
2 chapter 22 unless the entity created or agreement includes
3 public agencies from more than one state.

4 3. All proceedings of each regular, adjourned, or special
5 meeting of the entity created or the administrator or joint
6 board specified in the agreement, including the schedule of
7 bills allowed, shall be published after adjournment of the
8 meeting in a newspaper of general circulation within the
9 geographic area served by the entity created or the
10 administrator or joint board specified in the agreement. The
11 entity created or the administrator or joint board specified
12 in the agreement shall furnish a copy of the proceedings to be
13 published to the newspaper within one week following
14 adjournment of the meeting. The publication of the schedule
15 of bills allowed shall include a list of all salaries paid for
16 services performed, showing the name of the person or firm
17 performing the service and the amount paid. However, the
18 names and gross salaries of persons regularly employed by the
19 entity created or the administrator or joint board specified
20 in the agreement shall only be published annually. This
21 subsection shall not apply if the entity or the administrator
22 or joint board specified in the agreement includes public
23 agencies from more than one state.

24 Sec. 8. ELECTRONIC SUBMISSION OF CONTRACTS -- REPORT. The
25 department of administrative services shall submit a report
26 concerning steps necessary to provide for the electronic
27 submission and retention of contracts by the department. The
28 department shall submit the report, with its findings and
29 recommendations, to the general assembly by December 1, 2006.
30 The report shall identify any costs associated with
31 implementing the recommendations of the report.

32 Sec. 9. IMPLEMENTATION PROVISION.

33 1. This division of this Act applies to service contracts
34 entered into or renewed by an oversight agency, as those terms
35 are defined in section 8F.2 as created in this division of

1 this Act, on or after October 1, 2006.

2 2. The section of this division of this Act amending Code
3 section 28E.6 is applicable on or after July 1, 2006.

4 DIVISION II

5 AUDITOR OF STATE DUTIES

6 Sec. 10. Section 11.36, Code 2005, is amended by striking
7 the section and inserting in lieu thereof the following:

8 11.36 REVIEW OF ENTITIES RECEIVING PUBLIC MONEYS.

9 1. The auditor of state may, at the request of a
10 department, review, during normal business hours upon
11 reasonable notice of at least twenty-four hours, the audit
12 working papers prepared by a certified public accountant
13 covering the receipt and expenditure of state or federal funds
14 provided by the department to any other entity to determine if
15 the receipt and expenditure of those funds by the entity is
16 consistent with the laws, rules, regulations, and contractual
17 agreements governing those funds. Upon completion of the
18 review, the auditor of state shall report whether, in the
19 auditor of state's judgment, the auditor of state believes the
20 certified public accountant's working papers adequately
21 demonstrate that the laws, rules, regulations, and contractual
22 agreements governing the funds have been substantially
23 complied with. If the auditor of state does not believe the
24 certified public accountant's working papers adequately
25 demonstrate that the laws, rules, regulations, and contractual
26 agreements have been substantially complied with or believes a
27 complete or partial reaudit is necessary based on the
28 provisions of section 11.6, subsection 4, paragraph "a", or
29 "b", the auditor of state shall notify the certified public
30 accountant and the department of the actions the auditor of
31 state believes are necessary to determine that the entity is
32 in substantial compliance with those laws, rules, regulations,
33 and contractual agreements. The auditor of state may assist
34 departments with actions to determine that the entity is in
35 substantial compliance. Departments shall reimburse the

1 auditor of state for the cost of the review and any subsequent
2 assistance provided by the auditor of state.

3 2. The auditor of state may, at the request of a
4 department, review the records covering the receipt and
5 expenditure of state or federal funds provided by the
6 department to any other entity which has not been audited by a
7 certified public accountant to determine if the receipt and
8 expenditure of those funds by the entity is consistent with
9 the laws, rules, regulations, and contractual agreements
10 governing those funds. Upon completion of the review, the
11 auditor of state shall report whether, in the auditor of
12 state's judgment, the auditor of state believes the entity
13 adequately demonstrated that the laws, rules, regulations, and
14 contractual agreements governing the funds have been
15 substantially complied with. If the auditor of state does not
16 believe the entity adequately demonstrated that the laws,
17 rules, regulations, and contractual agreements have been
18 substantially complied with, the auditor of state shall notify
19 the department of the actions the auditor of state believes
20 are necessary to determine that the entity is in substantial
21 compliance with those laws, rules, regulations, and
22 contractual agreements. The auditor of state may assist a
23 department with actions to determine that the entity is in
24 substantial compliance. Departments shall reimburse the
25 auditor of state for the cost of the review and any subsequent
26 assistance provided by the auditor of state.

27 3. When, in the auditor of state's judgment, the auditor
28 of state finds that sufficient information is available to
29 demonstrate that an entity receiving state or federal funds
30 from a department may not have substantially complied with the
31 laws, rules, regulations, and contractual agreements governing
32 those funds, the auditor of state shall notify the department
33 providing those funds to the entity of the auditor of state's
34 finding. The department shall cooperate with the auditor of
35 state to establish actions to be taken to determine whether

1 substantial compliance with those laws, rules, regulations,
2 and contractual agreements has been achieved by the entity
3 receiving the state or federal funds from the department.
4 Departments shall reimburse the auditor of state for any
5 actions taken by the auditor of state to determine whether the
6 entity has substantially complied with the laws, rules,
7 regulations, and contractual agreements governing the funds
8 provided by the department for costs expended after the date
9 the auditor of state notifies the department of an issue
10 involving substantial compliance pursuant to the requirements
11 of this subsection.

12 Sec. 11. NEW SECTION. 11.37 ACCESS TO CONFIDENTIAL
13 INFORMATION.

14 1. The auditor of state, when conducting any audit or
15 review required or permitted by this chapter, shall at all
16 times have access to all information, records,
17 instrumentalities, and properties used in the performance of
18 the audited or reviewed entities' statutory duties or
19 contractual responsibilities. All audited or reviewed
20 entities shall cooperate with the auditor of state in the
21 performance of the audit or review and make available the
22 information, records, instrumentalities, and properties upon
23 the request of the auditor of state.

24 2. If the information, records, instrumentalities, and
25 properties sought by the auditor of state are required by law
26 to be kept confidential, the auditor of state shall have
27 access to the information, records, instrumentalities, and
28 properties, but shall maintain the confidentiality of all such
29 information and is subject to the same penalties as the lawful
30 custodian of the information for dissemination of the
31 information. However, the auditor of state shall not have
32 access to the income tax returns of individuals.

33 DIVISION III

34 CITIZENS' AIDE DUTIES --
35 DISCLOSURES OF INFORMATION

*1 Sec. 12. Section 2C.9, subsection 1, Code 2005, is amended
2 to read as follows:

3 1. Investigate, on complaint or on the citizens' aide's
4 own motion, any administrative action of any agency, without
5 regard to the finality of the administrative action, except
6 that the citizens' aide shall not investigate the complaint of
7 an employee of an agency in regard to that employee's
8 employment relationship with the agency except as otherwise
9 provided by this chapter. A communication or receipt of
10 information made pursuant to the powers prescribed in this
11 chapter shall not be considered an ex parte communication as
12 described in the provisions of section 17A.17.

13 Sec. 13. NEW SECTION. 2C.11A SUBJECTS FOR INVESTIGATIONS
14 -- DISCLOSURES OF INFORMATION.

15 The office of citizens' aide shall investigate a complaint
16 filed by an employee who is not a merit system employee or an
17 employee covered by a collective bargaining agreement and who
18 alleges that adverse employment action has been taken against
19 the employee in violation of section 70A.28, subsection 2. A
20 complaint filed pursuant to this section shall be made within
21 thirty calendar days following the effective date of the
22 adverse employment action. The citizens' aide shall
23 investigate the matter and shall issue findings relative to
24 the complaint in an expeditious manner.

25 Sec. 14. Section 70A.28, subsection 2, Code 2005, is
26 amended to read as follows:

27 2. A person shall not discharge an employee from or take
28 or fail to take action regarding an employee's appointment or
29 proposed appointment to, promotion or proposed promotion to,
30 or any advantage in, a position in a state employment system
31 administered by, or subject to approval of, a state agency as
32 a reprisal for a failure by that employee to inform the person
33 that the employee made a disclosure of information permitted
34 by this section, or for a disclosure of any information by
35 that employee to a member or employee of the general assembly,

1 a disclosure of information to the office of citizens' aide,
2 or a disclosure of information to any other public official or
3 law enforcement agency if the employee reasonably believes the
4 information evidences a violation of law or rule,
5 mismanagement, a gross abuse of funds, an abuse of authority,
6 or a substantial and specific danger to public health or
7 safety. However, an employee may be required to inform the
8 person that the employee made a disclosure of information
9 permitted by this section if the employee represented that the
10 disclosure was the official position of the employee's
11 immediate supervisor or employer.

12 Sec. 15. Section 70A.28, Code 2005, is amended by adding
13 the following new subsection:

14 NEW SUBSECTION. 5A. Subsection 2 may also be enforced by
15 an employee through an administrative action pursuant to the
16 requirements of this subsection if the employee is not a merit
17 system employee or an employee covered by a collective
18 bargaining agreement. An employee eligible to pursue an
19 administrative action pursuant to this subsection who is
20 discharged, suspended, demoted, or otherwise reduced in pay
21 and who believes the adverse employment action was taken as a
22 result of the employee's disclosure of information that was
23 authorized pursuant to subsection 2, may file an appeal of the
24 adverse employment action with the public employment relations
25 board within thirty calendar days following the later of the
26 effective date of the action or the date a finding is issued
27 to the employee by the office of the citizens' aide pursuant
28 to section 2C.11A. The findings issued by the citizens' aide
29 may be introduced as evidence before the public employment
30 relations board. The employee has the right to a hearing
31 closed to the public, but may request a public hearing. The
32 hearing shall otherwise be conducted in accordance with the
33 rules of the public employment relations board and the Iowa
34 administrative procedure Act, chapter 17A. If the public
35 employment relations board finds that the action taken by the

1 person appointing the employee was in violation of subsection
2 2, the employee may be reinstated without loss of pay or
3 benefits for the elapsed period, or the public employment
4 relations board may provide other appropriate remedies.
5 Decisions by the public employment relations board constitute
6 final agency action.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

DIVISION IV
LEGISLATIVE OVERSIGHT

Sec. 16. Section 2.45, subsection 5, Code 2005, is amended
by adding the following new paragraph:

NEW PARAGRAPH. c. The committee shall implement a
systematic process of reviewing the reports required to be
filed with the legislative services agency pursuant to section
8F.4.

SENATE FILE 2410

H-8654

1 Amend Senate File 2410, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. By striking page 1, line 1, through page 12,
4 line 35.

5 2. Page 15, by striking lines 7 through 14 and
6 inserting the following:

7 "Sec. ____ . Section 70A.29, subsection 1, Code
8 2005, is amended to read as follows:

9 1. A person shall not discharge an employee from
10 or take or fail to take action regarding an employee's
11 appointment or proposed appointment to, promotion or
12 proposed promotion to, or any advantage in, a position
13 in employment by a political subdivision of this state
14 or by an entity created under chapter 28E, as a
15 reprisal for a disclosure of any information by that
16 employee to a member or employee of the general
17 assembly, or an official of that political subdivision
18 or a state official or for a disclosure of information
19 to any other public official or law enforcement agency
20 if the employee reasonably believes the information
21 evidences a violation of law or rule, mismanagement, a
22 gross abuse of funds, an abuse of authority, or a
23 substantial and specific danger to public health or
24 safety. This section does not apply if the disclosure
25 of the information is prohibited by statute.

26 Sec. ____ . NEW SECTION. 70A.29A DISCLOSURE OF
27 COMPENSATION.

28 By November 1 of each year, an employer, as defined
29 by section 97B.1A, shall publish a report, in a local
30 newspaper of general circulation, which contains the
31 name, gender, county, or city of residence when
32 possible, official title, salary received during the
33 previous fiscal year, compensation as computed on July
34 1 of the current fiscal year, and traveling and
35 subsistence expense of the personnel of each employee
36 of the employer covered by chapter 97B, except
37 personnel who receive an annual salary of less than
38 one thousand dollars. The number of the personnel and
39 the total amount received by them shall be shown. All
40 employees who have drawn salaries, fees, or expense
41 allowances from more than one department or
42 subdivision of an employer shall be listed separately
43 under the proper departmental heading. The report
44 shall be distributed upon request without charge in an
45 electronic medium to each caucus of the general
46 assembly, the legislative services agency, the chief
47 clerk of the house of representatives, and the
48 secretary of the senate. Copies of the report shall
49 be made available to other persons in an electronic
50 medium upon payment of a fee, which shall not exceed

H-8654

H-8654

Page 2

1 the cost of providing the copy of the report.
2 Sections 22.2 through 22.6 apply to the report. This
3 section shall not apply to employers whose employees'
4 salaries and related information are already required
5 to be published pursuant to section 8A.341."
6 3. Title page, by striking lines 1 through 9 and
7 inserting the following: "An Act concerning
8 disclosures of information by certain employers and
9 providing for the disclosure of compensation by
10 employees covered under the Iowa public employees'
11 retirement system."
12 4. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-8654 FILED MAY 3, 2006

WITHDRAWN

SENATE FILE 2410

H-8653

1 Amend Senate File 2410, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 2, line 28, by striking the words "five
4 hundred" and inserting the following: "fifty".
5 2. Page 2, line 31, by striking the words "five
6 hundred" and inserting the following: "fifty".

By FORD of Polk

H-8653 FILED MAY 3, 2006

WITHDRAWN

SENATE FILE 2410

H-8655

1 Amend Senate File 2410, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 15, by inserting after line 6 the
4 following:

5 "Sec. ____ . NEW SECTION. 70A.29A REPRISALS
6 PROHIBITED -- EMPLOYEES -- PENALTY -- CIVIL REMEDIES.

7 1. DEFINITIONS. As used in this section, unless
8 the context otherwise requires:

9 a. "Employee" means a person employed by the state
10 including but not limited to a person employed by the
11 general assembly and a person employed by the state
12 board of regents, by a political subdivision of the
13 state, or by a government-funded contractor.

14 "Employee" includes but is not limited to an
15 accountant, administrative assistant, construction
16 worker, day care worker, health care worker, social
17 worker, teacher, and full-time or part-time
18 legislative employee who are employed by the state, a
19 political subdivision of the state, or a
20 government-funded contractor.

21 b. "Government-funded contractor" means a person
22 receiving state or federal funds under a service
23 contract as provided in section 8.47.

24 2. An employee, who reasonably believes that a
25 particular practice the employee has observed
26 occurring at the employee's place of employment is a
27 violation of laws or regulations applicable to the
28 employee's employer, is a breach of public safety that
29 may result in harm to consumers or citizens, or is in
30 violation of employee professional standards of care
31 or professional codes of ethics, may report the
32 violation or breach to the employee's supervisor or
33 employer so that corrective action may be taken. A
34 report pursuant to this subsection shall be made
35 within fourteen days of the occurrence of the
36 violation or breach. An employee making a report
37 shall be protected against reprisals or retaliatory or
38 punitive action by the supervisor or employer
39 receiving the report.

40 3. If, after a reasonable period of time for
41 correction of the violation or breach reported
42 pursuant to subsection 2 an employee continues to
43 observe the particular practice that was the subject
44 of the report occurring in the workplace, the employee
45 may disclose information relating to the violation or
46 breach, and the fact that a correction of the
47 violation or breach has not been made, to the office
48 of citizens' aide, a licensing board, if applicable, a
49 member or employee of the general assembly, the office
50 of the attorney general, any other public official or

H-8655

1 law enforcement agency, a federal government agency or
2 program, the governing board of the employee's
3 employer, the employee's professional association or
4 collective bargaining unit, or the media. The
5 employee shall be protected against reprisals or
6 retaliatory or punitive action by the supervisor or
7 employer that received the report if disclosure of the
8 information is not otherwise prohibited by law and
9 informs state agencies or entities of a violation of
10 state law or regulation, or is reasonably believed by
11 the employee to be a violation of law or regulation or
12 a breach of public safety that may lead to an adverse
13 event to consumers or citizens, based upon employee
14 professional standards of care or professional codes
15 of ethics.

16 4. An employee disclosing information in good
17 faith pursuant to subsection 2 or 3 is presumed to
18 have established a prima facie case showing a
19 violation of the protections against reprisals or
20 retaliatory or punitive action by the employee's
21 employer if the supervisor or employer knows or has
22 reason to know of the disclosure, and if subsequent to
23 and as a result of the disclosure, one or more of the
24 following actions were initiated by the employer:

- 25 a. Discharge of the employee from employment.
- 26 b. Failure by the employer to take action
27 regarding an employee's appointment, promotion or
28 proposed promotion, or receipt of any advantage or
29 benefit in the employee's position of employment.
- 30 c. An adverse change to the employee's terms or
31 conditions of employment or any administrative, civil,
32 or criminal action or other effort that diminishes the
33 professional competence, reputation, stature, or
34 marketability of the employee.

35 The employer has the burden to prove that actions
36 taken pursuant to this subsection were for a
37 legitimate business purpose.

38 5. If a supervisor or employer is determined to
39 have violated state laws or regulations, or
40 professional standards of care or professional codes
41 of ethics after a disclosure pursuant to subsection 2
42 or 3 results in an action as described in subsection
43 4, such a determination shall create a presumption of
44 retaliation or reprisal against the employee in
45 violation of this section.

46 6. A person who violates this section commits a
47 simple misdemeanor and is subject to civil action, as
48 follows:

- 49 a. An employer who violates this section is liable
50 to an aggrieved employee for affirmative relief,

1 including reinstatement with or without pay, or any
2 other equitable relief the court deems appropriate,
3 including attorney fees and costs, punitive damages,
4 and public notice of the retaliation or reprisal
5 undertaken against the employee through publication in
6 an official newspaper in the city or county.

7 b. When a person commits, is committing, or
8 proposes to commit an act in violation of this
9 section, an injunction may be granted through an
10 action in district court to prohibit the person from
11 continuing such act. The action for injunctive relief
12 may be brought by an aggrieved employee or by the
13 county attorney.

14 7. In addition to any other penalties applicable
15 for violation of this section, an employer of an
16 employee who violates this section with respect to
17 another employee of the employer shall be subject to a
18 civil penalty in the amount of one thousand dollars
19 per violation.

20 8. The provisions of this section are in addition
21 to, and not in lieu of, any other provisions of law
22 applicable to disclosures of information by
23 employees."

24 2. By renumbering as necessary."

By WISE of Lee
BUKTA of Clinton
KUHN of Floyd
LYKAM of Scott
McCARTHY of Polk
MILLER of Webster
OLDSON of Polk
FOEGE of Linn
HEDDENS of Story
MURPHY of Dubuque
D. OLSON of Boone
PETTENGILL of Benton

REASONER of Union
SCHUELLER of Jackson
T. TAYLOR of Linn
THOMAS of Clayton
WESSEL-KROESCHELL of Story
WHITEAD of Woodbury
QUIRK of Chickasaw
REICHERT of Muscatine
SHOMSHOR of Pottawattamie
D. TAYLOR of Linn
WHITAKER of Van Buren
WINCKLER of Scott

SENATE FILE 2410

H-8656

1 Amend Senate File 2410, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 13, by inserting before line 1 the
4 following:

5 "Sec. _____. Section 2.12, unnumbered paragraph 4,
6 Code 2005, is amended to read as follows:

7 There is appropriated out of any funds in the state
8 treasury not otherwise appropriated such sums as may
9 be necessary for the fiscal year budgets of the
10 legislative services agency and the office of the
11 citizens' aide ~~office~~ and inspector general for
12 salaries, support, maintenance, and miscellaneous
13 purposes to carry out their statutory
14 responsibilities. The legislative services agency and
15 the office of the citizens' aide ~~office~~ and inspector
16 general shall submit their proposed budgets to the
17 legislative council not later than September 1 of each
18 year. The legislative council shall review and
19 approve the proposed budgets not later than December 1
20 of each year. The budget approved by the legislative
21 council for each of its statutory legislative agencies
22 shall be transmitted by the legislative council to the
23 department of management on or before December 1 of
24 each year for the fiscal year beginning July 1 of the
25 following year. The department of management shall
26 submit the approved budgets received from the
27 legislative council to the governor for inclusion in
28 the governor's proposed budget for the succeeding
29 fiscal year. The approved budgets shall also be
30 submitted to the chairpersons of the committees on
31 appropriations. The committees on appropriations may
32 allocate from the funds appropriated by this section
33 the funds contained in the approved budgets, or such
34 other amounts as specified, pursuant to a concurrent
35 resolution to be approved by both houses of the
36 general assembly. The director of the department of
37 administrative services shall issue warrants for
38 salaries, support, maintenance, and miscellaneous
39 purposes upon requisition by the administrative head
40 of each statutory legislative agency. If the
41 legislative council elects to change the approved
42 budget for a legislative agency prior to July 1, the
43 legislative council shall transmit the amount of the
44 budget revision to the department of management prior
45 to July 1 of the fiscal year, however, if the general
46 assembly approved the budget it cannot be changed
47 except pursuant to a concurrent resolution approved by
48 the general assembly.

49 Sec. _____. Section 2.42, subsection 14, Code 2005,
50 is amended to read as follows:

H-8656

1 14. To hear and act upon appeals of aggrieved
2 employees of the legislative services agency and the
3 office of the citizens' aide and inspector general
4 pursuant to rules of procedure established by the
5 council."

6 2. Page 13, by inserting after line 24 the
7 following:

8 "Sec. _____. Section 23A.4, unnumbered paragraph 3,
9 Code 2005, is amended to read as follows:

10 Chapter 17A and this section are the exclusive
11 remedy for violations of this chapter. However, the
12 office of the citizens' aide and inspector general may
13 review violations of this chapter and make
14 recommendations as provided in chapter 2C."

15 3. Page 15, by inserting after line 6 the
16 following:

17 "Sec. _____. Section 70A.28, subsection 7, Code
18 2005, is amended to read as follows:

19 7. The director of the department of
20 administrative services or, for employees of the
21 general assembly or of the state board of regents, the
22 legislative council or the state board of regents,
23 respectively, shall provide procedures for notifying
24 new state employees of the provisions of this section
25 and shall periodically conduct promotional campaigns
26 to provide similar information to state employees.
27 The information shall include the toll-free telephone
28 number of the office of the citizens' aide and
29 inspector general.

30 Sec. _____. Section 236.16, subsection 1, paragraph
31 c, Code 2005, is amended to read as follows:

32 c. Designate and award moneys for publicizing and
33 staffing a statewide, toll-free telephone hotline for
34 use by victims of domestic abuse. The department may
35 award a grant to a public agency or a private,
36 nonprofit organization for the purpose of operating
37 the hotline. The operation of the hotline shall
38 include informing victims of their rights and of
39 various community services that are available,
40 referring victims to service providers, receiving
41 complaints concerning misconduct by peace officers and
42 encouraging victims to refer such complaints to the
43 office of citizens' aide and inspector general,
44 providing counseling services to victims over the
45 telephone, and providing domestic abuse victim
46 advocacy.

47 Sec. _____. Section 252B.18, subsection 1, paragraph
48 a, Code 2005, is amended to read as follows:

49 a. The department shall establish a child support
50 advisory committee. Members shall include at least

1 one district judge and representatives of custodial
2 parent groups, noncustodial parent groups, the general
3 assembly, the office of citizens' aide and inspector
4 general, the Iowa state bar association, the Iowa
5 county attorneys association, and other constituencies
6 which have an interest in child support enforcement
7 issues, appointed by the respective entity.

8 Sec. ____ . AMENDMENTS CHANGING TERMINOLOGY --

9 DIRECTIVE TO CODE EDITOR. The Iowa Code editor is
10 directed to strike the words "citizens' aide" and
11 insert the words "citizens' aide and inspector
12 general" wherever the words "citizens' aide" appear in
13 chapter 2C of the Code unless a contrary intent is
14 clearly evident."

15 4. By renumbering as necessary.

By WISE of Lee

FOEGE of Linn

BUKTA of Clinton

MURPHY of Dubuque

H-8656 FILED MAY 3, 2006

WITHDRAWN

Wieck co-chair
Courtney co-chair
Ward
Connolly co-chair

Succeeded
SF HF 2410

SSB#3271
Government Oversight

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
GOVERNMENT OVERSIGHT BILL
BY CO-CHAIRPERSON WIECK)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to government accountability and concerning
2 service contract requirements, contractual requirements for
3 certain entities receiving public moneys, requirements for
4 joint agreements involving governmental entities, additional
5 review by the auditor of state, the authority of the citizens'
6 aide, establishment of a whistleblower board, and the
7 authority of the legislative oversight committee, and
8 including an implementation provision and making penalties
9 applicable.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

11
12
13
14
15
16
17
18
19
20
21
22

DIVISION I

GOVERNMENT ACCOUNTABILITY

Section 1. NEW SECTION. 8F.1 PURPOSE.

This chapter is intended to create mechanisms to most effectively and efficiently monitor the utilization of public moneys by providing the greatest possible accountability for the expenditure of public moneys.

Sec. 2. NEW SECTION. 8F.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Agency" means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in section 7E.4, including but not limited to each principal central department enumerated in section 7E.5.

2. "Compensation" means payment of, or agreement to pay, any money, thing of value, or financial benefit conferred in return for labor or services rendered by an officer, employee, or other person plus the value of benefits including but not limited to casualty, disability, life, or health insurance, other health or wellness benefits, vacations, holidays, and sick leave, severance payments, retirement benefits, and deferred compensation.

3. "Intergovernmental entity" means any separate organization established in accordance with chapter 28E or established by any other agreement between an agency and any other governmental entity, whether federal, state, or local, and any department, division, unit or subdivision thereof.

4. "Oversight agency" means an agency that contracts with and disburses state or federal moneys to a recipient entity.

5. "Private agency" means an individual or any form of business organization, including a nonprofit organization, authorized under the laws of this state or any other state or under the laws of any foreign jurisdiction.

6. "Recipient entity" means an intergovernmental entity or

1 a private agency that enters into a service contract with an
2 oversight agency to provide services which will be paid for
3 with local governmental, state, or federal moneys.

4 7. "Service" or "services" means work performed for an
5 oversight agency or for its client.

6 8. "Service contract" means a contract for a service or
7 services when the predominant factor, thrust, and purpose of
8 the contract as reasonably stated is for the provision of
9 services. When there is a contract for goods and services and
10 the predominant factor, thrust, and purpose of the contract as
11 reasonably stated is for the provision or rendering of
12 services with goods incidentally involved, a service contract
13 exists. "Service contract" includes grants when the
14 predominant factor, thrust, and purpose of the contract
15 formalizing the grant is for the provision of services.

16 "Service contract" does not include a contract that involves
17 transportation services or the construction, reconstruction,
18 improvement, repair, or maintenance of the transportation
19 system. For purposes of this chapter, a service contract only
20 exists when an individual service contract or a series of
21 service contracts entered into between an oversight agency and
22 a recipient entity exceeds five hundred thousand dollars or
23 when the grant or contract together with other grants or
24 contracts awarded to the recipient entity by the oversight
25 agency during the oversight agency's fiscal year exceeds five
26 hundred thousand dollars in the aggregate.

27 Sec. 3. NEW SECTION. 8F.3 CONTRACTUAL REQUIREMENTS.

28 1. As a condition of entering into a service contract with
29 an oversight agency, a recipient entity shall certify that the
30 recipient has the following information available for
31 inspection by the oversight agency and the legislative
32 services agency:

33 a. Information documenting the legal status of the
34 recipient entity, such as agreements establishing the entity
35 pursuant to chapter 28E or other intergovernmental agreements,

1 articles of incorporation, bylaws, or any other information
2 related to the establishment or status of the entity. In
3 addition, the information shall indicate whether the recipient
4 entity is exempt from federal income taxes under section
5 501(c)(3), of the Internal Revenue Code.

6 b. Information regarding the training and education
7 received by the members of the governing body of the recipient
8 entity relating to the duties and legal responsibilities of
9 the governing body.

10 c. Information regarding the procedures used by the
11 governing body of the recipient entity to do all of the
12 following:

13 (1) Review the performance of management employees and
14 establish the compensation of those employees.

15 (2) Review the recipient entity's internal controls
16 relating to accounting processes and procedures.

17 (3) Review the recipient entity's compliance with the
18 laws, rules, regulations, and contractual agreements
19 applicable to its operations.

20 (4) Information regarding adopted ethical and professional
21 standards of operation for the governing body and employees of
22 the recipient entity and information concerning the
23 implementation of these standards and the training of
24 employees and members of the governing body on the standards.
25 The standards shall include but not be limited to disclosure
26 of familial relationships among employees and between
27 employees and members of the governing body, policies
28 regarding nepotism and conflicts of interest, standards of
29 responsibility and obedience to law, fairness, and honesty.

30 d. Information regarding any policies adopted by the
31 governing body of the recipient entity that prohibit taking
32 adverse employment action against employees of the recipient
33 entity who disclose information about a service contract to
34 the oversight agency, the auditor of state, or the office of
35 citizens' aide and that state whether those policies are

1 substantially similar to the protection provided to state
2 employees under section 70A.28. The information provided
3 shall state whether employees of the recipient entity are
4 informed on a regular basis of their rights to disclose
5 information to the oversight agency, the office of citizens'
6 aide, the auditor of state, or the office of the attorney
7 general and the telephone numbers of those organizations.

8 2. The certification required by this section shall be
9 signed by an officer and director of the recipient entity, two
10 directors of the recipient entity, or the sole proprietor of
11 the recipient entity, whichever is applicable, and shall state
12 that the recipient entity is in full compliance with all laws,
13 rules, regulations, and contractual agreements applicable to
14 the recipient entity and the requirements of this chapter.

15 3. Prior to entering into a service contract with a
16 recipient entity, the oversight agency shall determine whether
17 the recipient entity can reasonably be expected to comply with
18 the requirements of the service contract. If the oversight
19 entity is unable to determine whether the recipient entity can
20 reasonably be expected to comply with the requirements of the
21 service contract, the oversight entity shall request such
22 information from the recipient entity as described in
23 subsection 1 to make a determination. If the oversight agency
24 determines from the information provided that the recipient
25 entity cannot reasonably be expected to comply with the
26 requirements of the service contract, the oversight agency
27 shall not enter into the service contract.

28 Sec. 4. NEW SECTION. 8F.4 REPORTING REQUIREMENTS.

29 1. As a condition of continuing to receive state or
30 federal moneys through an oversight agency for a service
31 contract, a recipient entity shall file an annual report with
32 the oversight agency and with the legislative services agency
33 within ten months following the end of the recipient entity's
34 fiscal year. However, if the information otherwise required
35 to be included in an annual report described in subsection 2

1 is otherwise reported to the oversight agency pursuant to
2 federal or state statutes or rules, the recipient entity shall
3 not be required to submit the annual report. The information
4 otherwise required to be included in an annual report shall be
5 filed with the recipient entity and with the legislative
6 services agency.

7 2. The annual report required to be filed pursuant to this
8 section shall contain the following:

9 a. Financial information relative to the expenditure of
10 state and federal moneys for the prior year pursuant to the
11 service contract. The financial information shall include but
12 is not limited to budget and actual revenue and expenditure
13 information for the year covered.

14 b. Financial information relating to service contracts
15 with the oversight agency during the preceding year, including
16 the costs by category to provide the services contracted for
17 and the cost per unit of service provided under the service
18 contract.

19 c. Reportable conditions in internal control reports or
20 material noncompliance with provisions of laws, rules,
21 regulations, or contractual agreements included in external
22 audit reports of the recipient entity received during the
23 preceding year.

24 d. Corrective action taken or planned by the recipient
25 entity in response to reportable conditions in internal
26 control reports or material noncompliance with laws, rules,
27 regulations, or contractual agreements included in external
28 audit reports received during the preceding year.

29 e. Any changes in the information submitted in accordance
30 with section 8F.3.

31 f. A certification signed by an officer and director of
32 the recipient entity, two directors of the recipient entity,
33 or the sole proprietor of the recipient entity, whichever is
34 applicable, stating the annual report is accurate and the
35 recipient entity is in full compliance with all laws, rules,

1 regulations, and contractual agreements applicable to the
2 recipient entity and the requirements of this chapter.

3 3. In addition to the reports otherwise required to be
4 filed pursuant to this section, a recipient entity shall be
5 required to submit such supplemental information as requested
6 by the oversight agency or the legislative services agency
7 relating to the entity's expenditure of state and federal
8 moneys.

9 4. The oversight agency shall file a copy of each service
10 contract in an electronic format with the department of
11 administrative services.

12 Sec. 5. NEW SECTION. 8F.5 ENFORCEMENT.

13 Any service contract awarded to a recipient entity shall
14 provide that the oversight agency may terminate the service
15 contract if the recipient entity, during the duration of the
16 contract, fails to comply with the requirements of this
17 chapter. In addition, the service contract shall provide a
18 mechanism for the forfeiture and recovery of state or federal
19 funds expended by a recipient entity in violation of the laws
20 applicable to the expenditure of the money or the requirements
21 of the service contract and this chapter.

22 Sec. 6. Section 8.47, Code 2005, is amended by adding the
23 following new subsection:

24 NEW SUBSECTION. 5. Each department or establishment
25 executing a service contract shall file a copy of the service
26 contract in an electronic format with the department of
27 administrative services.

28 Sec. 7. Section 8E.203, Code 2005, is amended to read as
29 follows:

30 8E.203 STRATEGIC PLAN -- PURPOSES.

31 The purposes of strategic plans are to promote long-term
32 and broad thinking, focus on results for Iowans, and guide the
33 allocation of human and material resources and day-to-day
34 activities. To promote these purposes and because agencies
35 are accountable for public resources entrusted to the

1 agencies, strategic plans must include a description of the
2 methods agencies will use to determine how public resources
3 are used in accordance with applicable laws, rules,
4 regulations, and contractual agreements to achieve acceptable
5 public benefits.

6 Sec. 8. Section 8E.208, Code 2005, is amended by adding
7 the following new unnumbered paragraph:

8 NEW UNNUMBERED PARAGRAPH. Performance measurement is
9 essential to ensuring adequate accountability over public
10 resources and the exchange of public resources for desirable
11 and acceptable public benefits. Performance measurement must
12 include an assessment of whether agencies have adequate
13 control procedures in place, and whether those control
14 procedures are operating effectively, to determine that
15 agencies are receiving or providing services of adequate
16 quality, public resources are being used effectively and
17 efficiently, and public resources are being used for
18 appropriate and meaningful activities.

19 Sec. 9. Section 28E.5, Code 2005, is amended by adding the
20 following new subsections:

21 NEW SUBSECTION. 7. That the entity created shall comply
22 with the requirements of chapters 21 and 22 to the same extent
23 as the requirements are applicable to the public agencies of
24 the state that entered into the agreement creating the entity.

25 NEW SUBSECTION. 8. That the entity created shall make
26 available to the public all compensation paid by the entity to
27 employees of the entity created.

28 Sec. 10. IMPLEMENTATION PROVISION.

29 1. This division of this Act applies to service contracts
30 entered into or renewed by an oversight agency, as those terms
31 are defined in section 8F.2 as created in this division of
32 this Act, on or after October 1, 2006.

33 2. The section of this division of this Act amending Code
34 section 28E.5 is applicable on or after July 1, 2006.

35

DIVISION II

1 department to any other entity which has not been audited by a
2 certified public accountant to determine if the receipt and
3 expenditure of those funds by the entity is consistent with
4 the laws, rules, regulations, and contractual agreements
5 governing those funds. Upon completion of the review, the
6 auditor of state shall report whether, in the auditor of
7 state's judgment, the auditor of state believes the entity
8 adequately demonstrated that the laws, rules, regulations, and
9 contractual agreements governing the funds have been
10 substantially complied with. If the auditor of state does not
11 believe the entity adequately demonstrated that the laws,
12 rules, regulations, and contractual agreements have been
13 substantially complied with, the auditor of state shall notify
14 the department of the actions the auditor of state believes
15 are necessary to determine that the department is in
16 substantial compliance with those laws, rules, regulations,
17 and contractual agreements. The auditor of state may assist a
18 department with actions to determine that the department is in
19 substantial compliance. Departments shall reimburse the
20 auditor of state for the cost of the review and any subsequent
21 assistance provided by the auditor of state.

22 3. When, in the auditor of state's judgment, the auditor
23 of state finds that sufficient information is available to
24 demonstrate that an entity receiving state or federal funds
25 from a department may not have substantially complied with the
26 laws, rules, regulations, and contractual agreements governing
27 those funds, the auditor of state shall notify the department
28 providing those funds to the entity of the auditor of state's
29 finding. The department shall cooperate with the auditor of
30 state to establish actions to be taken to determine whether
31 substantial compliance with those laws, rules, regulations,
32 and contractual agreements has been achieved by the entity
33 receiving the state or federal funds from the department.
34 Departments shall reimburse the auditor of state for any
35 actions taken by the auditor of state to determine whether the

1 entity has substantially complied with the laws, rules,
 2 regulations, and contractual agreements governing the funds
 3 provided by the department for costs expended after the date
 4 the auditor of state notifies the department of an issue
 5 involving substantial compliance pursuant to the requirements
 6 of this subsection.

7 DIVISION III

8 CITIZENS' AIDE DUTIES

9 Sec. 12. Section 2C.1, subsection 2, Code 2005, is amended
 10 to read as follows:

11 2. a. "Agency" means all-governmental-entities,
 12 departments,-boards,-commissions,-councils-or-institutions, a
 13 department, board, commission, council, institution, or other
 14 governmental body of the state or a political subdivision of
 15 the state, a legal or administrative entity created pursuant
 16 to chapter 28E, a private entity providing individualized or
 17 public services under a contract with a governmental body of
 18 the state or a political subdivision of the state, and any
 19 officer, employee, or member thereof acting or purporting to
 20 act in the exercise of official duties,-but-it or providing
 21 services enumerated in a contract.

22 b. "Agency" does not include mean:

23 a- (1) Any court or judge or appurtenant judicial staff.

24 b- (2) The members, committees, or permanent or temporary
 25 staffs of the Iowa general assembly.

26 c- (3) The governor of Iowa or the governor's personal
 27 staff.

28 d- (4) Any instrumentality formed pursuant to an
 29 interstate compact and answerable to more than one state.

30 Sec. 13. Section 2C.9, subsection 1, Code 2005, is amended
 31 to read as follows:

32 1. Investigate, on complaint or on the citizens' aide's
 33 own motion, any administrative action of any agency, without
 34 regard to the finality of the administrative action, except
 35 that the citizens' aide shall not investigate the complaint of

1 an employee of an agency in regard to that employee's
2 employment relationship with the agency except as otherwise
3 provided by this section. A communication or receipt of
4 information made pursuant to the powers prescribed in this
5 chapter shall not be considered an ex parte communication as
6 described in the provisions of section 17A.17.

7 Sec. 14. Section 2C.9, Code 2005, is amended by adding the
8 following new subsections:

9 NEW SUBSECTION. 7. Provide administrative and
10 investigative assistance to the whistleblower board
11 established in section 2E.1.

12 NEW SUBSECTION. 8. Provide information to state employees
13 and their employers relating to the rights of employees to
14 disclose information under section 8A.417, subsection 4, and
15 section 70A.28, subsection 1 or 2.

16 Sec. 15. NEW SECTION. 2E.1 INDEPENDENT WHISTLEBLOWER
17 BOARD -- ESTABLISHED -- DUTIES.

18 1. An Iowa whistleblower board is established as an
19 independent agency within the office of citizens' aide. The
20 board shall administer this chapter and investigate complaints
21 and conduct hearings relating to the disclosure of information
22 by state employees as governed by sections 8A.417 and 70A.28.

23 2. The board shall consist of three members, who shall not
24 be state employees or employees of an entity receiving state
25 funds, and shall be balanced as to political affiliation as
26 provided in section 69.16. One member shall be appointed by
27 the legislative council, one member shall be appointed by the
28 majority leader of the senate in consultation with the
29 minority leader of the senate, and one member shall be
30 appointed by the speaker of the house in consultation with the
31 minority leader of the house.

32 3. Members shall serve at the pleasure of the appointing
33 authority but in no event for longer than a two-year term
34 which shall expire upon the convening of the following general
35 assembly, or when the appointee's successor is appointed,

1 whichever occurs later. A member of the board may be
2 reappointed to serve additional terms on the board.

3 4. The board shall annually elect one member to serve as
4 the chairperson of the board and one member to serve as vice
5 chairperson. The vice chairperson shall act as the
6 chairperson in the absence or disability of the chairperson or
7 in the event of a vacancy in that office.

8 5. Members of the board shall receive a per diem as
9 specified in section 7E.6 while conducting business of the
10 board, and payment of actual and necessary expenses incurred
11 in the performance of their duties.

12 6. The office of the citizens' aide shall provide
13 administrative and legal support to the board.

14 7. The board shall adopt rules pursuant to chapter 17A as
15 necessary to carry out the purposes of this chapter.

16 Sec. 16. NEW SECTION. 2E.2 COMPLAINT PROCEDURES.

17 1. A state employee who is discharged, suspended, demoted,
18 or otherwise reduced in pay and who believes the disciplinary
19 action was in violation of section 8A.417, subsection 4, or
20 section 70A.28, subsection 1 or 2, may appeal the disciplinary
21 action to the board created in section 2E.1 within thirty days
22 following the effective date of the action. The board shall
23 prescribe and provide complaint forms for this purpose. A
24 complaint must include the name and address of the
25 complainant, a statement of the facts believed to be true that
26 form the basis of the complaint, including the sources of
27 information and approximate dates of the action alleged, and a
28 certification by the complainant under penalty of perjury that
29 the facts stated to be true are true to the best of the
30 complainant's knowledge.

31 2. The board staff shall review the complaint to determine
32 if the complaint is sufficient as to form. If the complaint
33 is deficient as to form, the complaint shall be returned to
34 the complainant with a statement of the deficiency and an
35 explanation describing how the deficiency may be cured. If

1 the complaint is sufficient as to form, the complaint shall be
2 referred for legal review.

3 3. Unless the chairperson of the board concludes that
4 immediate notification would prejudice a preliminary
5 investigation or subject the complainant to an unreasonable
6 risk, the board shall mail a copy of the complaint to the
7 subject of the complaint within three working days of the
8 acceptance of the complaint. If a determination is made by
9 the chairperson not to mail a copy of the complaint to the
10 subject of the complaint within the specified three working
11 days, the board shall approve and establish the time and
12 conditions under which the subject will be informed of the
13 filing and contents of the complaint.

14 4. Upon completion of legal review, the chairperson of the
15 board shall be advised whether, in the opinion of the legal
16 advisor, the complaint states an allegation which is legally
17 sufficient. A legally sufficient allegation must allege facts
18 that would establish a violation of section 8A.417, subsection
19 4, or section 70A.28, subsection 1 or 2.

20 5. If the board determines that none of the allegations
21 contained in the complaint are legally sufficient, the
22 complaint shall be dismissed. The complainant shall be sent a
23 notice of dismissal stating the reason or reasons for the
24 dismissal. If a copy of the complaint was sent to the subject
25 of the complaint, a copy of the notice of dismissal shall be
26 sent to the subject of the complaint. If the board determines
27 that any allegation contained in the complaint is legally
28 sufficient, the complaint shall be referred to the board staff
29 for investigation of any legally sufficient allegations.

30 6. The purpose of an investigation by the board's staff is
31 to determine whether there is probable cause to believe that
32 there has been a violation of section 8A.417, subsection 4, or
33 section 70A.28, subsection 1 or 2. To facilitate the conduct
34 of investigations, the board may issue and seek enforcement of
35 subpoenas requiring the attendance and testimony of witnesses

1 and subpoenas requiring the production of books, papers,
2 records, and other real evidence relating to the matter under
3 investigation. Upon the request of the board, an appropriate
4 county attorney or the attorney general shall assist the staff
5 of the board in its investigation.

6 7. If the board determines on the basis of an
7 investigation by board staff that there is probable cause to
8 believe the existence of facts that would establish a
9 violation of section 8A.417, subsection 4, or section 70A.28,
10 subsection 1 or 2, the board may issue a statement of charges
11 and notice of a contested case proceeding to the complainant
12 and to the person who is the subject of the complaint, in the
13 manner provided for the issuance of statements of charges
14 under chapter 17A. If the board determines on the basis of an
15 investigation by staff that there is no probable cause to
16 believe that a violation has occurred, the board shall close
17 the investigation, dismiss any related complaint, and the
18 person making the complaint and the subject of the complaint
19 shall be notified of the dismissal.

20 8. At any stage during the investigation or after the
21 initiation of a contested case proceeding, the board may
22 approve a settlement regarding an alleged violation. Terms of
23 a settlement shall be reduced to writing and be available for
24 public inspection. An informal settlement may provide for any
25 remedy specified in section 2E.4. However, the board shall
26 not approve a settlement unless the board determines that the
27 terms of the settlement are in the public interest and are
28 consistent with the purposes of section 8A.417, subsection 4,
29 and section 70A.28, subsection 1 or 2.

30 9. A complaint shall be a public record, but some or all
31 of the contents may be treated as confidential under section
32 22.7, subsection 18, as if the complainant were a person
33 outside of government, to the extent necessary under
34 subsection 3 of this section. If the complainant, the person
35 who provides information to the board, or the person who is

1 the subject of an investigation publicly discloses the
2 existence of an investigation, the board may publicly confirm
3 the existence of the disclosed formal complaint or
4 investigation and, in the board's discretion, make the
5 complaint or the informal referral public, as well as any
6 other documents that were issued by the board to any party to
7 the investigation. However, investigative materials may be
8 furnished to the appropriate law enforcement authorities by
9 the board at any time. Upon the commencement of a contested
10 case proceeding by the board, all investigative material
11 relating to that proceeding shall be made available to the
12 subject of the proceeding. The entire record of any contested
13 case proceeding initiated under this section shall be a public
14 record.

15 Sec. 17. NEW SECTION. 2E.3 CONTESTED CASE PROCEEDINGS.

16 1. Contested case proceedings initiated as a result of a
17 complaint filed with the whistleblower board under this
18 chapter shall be conducted in accordance with the requirements
19 of chapter 17A. A preponderance of the evidence shall be
20 required to support a finding that a person has violated
21 section 8A.417, subsection 4, or section 70A.28, subsection 1
22 or 2. The case in support of the statement of charges shall
23 be presented at the hearing by one of the board's attorneys or
24 staff unless, upon the request of the board, the charges are
25 prosecuted by another legal counsel designated by the attorney
26 general.

27 2. Hearings held pursuant to this chapter shall be heard
28 by a quorum of the board, unless the board designates a board
29 member or an administrative law judge to preside at the
30 hearing. If a quorum of the board does not preside at the
31 hearing, the board member or administrative law judge shall
32 make a proposed decision. The board or presiding board member
33 may be assisted by an administrative law judge in the conduct
34 of the hearing and the preparation of a decision.

35 3. Upon a finding by the board that the party charged has

1 violated section 8A.417, subsection 4, or section 70A.28,
2 subsection 1 or 2, the board may impose any penalty provided
3 for by section 2E.4. Upon a final decision of the board
4 finding that the party charged has not violated section
5 8A.417, subsection 4, or section 70A.28, subsection 1 or 2,
6 the complaint shall be dismissed and the party charged and the
7 original complainant, if any, shall be notified.

8 4. The right of an appropriate county attorney or the
9 attorney general to commence and maintain a district court
10 prosecution for criminal violations of the law is unaffected
11 by any proceedings under this section.

12 5. The board shall adopt rules, pursuant to chapter 17A,
13 establishing procedures to administer this section.

14 Sec. 18. NEW SECTION. 2E.4 PENALTIES -- RECOMMENDED
15 ACTIONS.

16 1. The board, after a hearing and upon a finding that a
17 violation of section 8A.417, subsection 4, or section 70A.28,
18 subsection 1 or 2, has occurred, may do one or more of the
19 following:

20 a. Issue an order requiring the violator to cease and
21 desist from the violation found and to take any remedial
22 action deemed appropriate by the board.

23 b. Reinstate the aggrieved state employee, with or without
24 back pay, and provide such other equitable relief the board
25 deems appropriate, including the awarding of any attorney fees
26 and costs.

27 2. At any stage during an investigation, the board may
28 resolve the matter by admonishment to the alleged violator or
29 by any other means not specified in subsection 1 as a
30 posthearing remedy.

31 3. If a person fails to comply with an action of the board
32 under subsection 1, the board may petition the Polk county
33 district court for an order for enforcement of the action of
34 the board. The enforcement proceeding shall be conducted as
35 provided in section 2E.5.

1 Sec. 19. NEW SECTION. 2E.5 JUDICIAL REVIEW --
2 ENFORCEMENT.

3 Judicial review of the actions of the board may be sought,
4 in accordance with chapter 17A. Judicial enforcement of
5 orders of the board may be sought in accordance with chapter
6 17A.

7 Sec. 20. Section 70A.28, subsection 5, Code 2005, is
8 amended to read as follows:

9 5. Subsection Subsections 1 and 2 may be enforced through
10 a-civil-action filing a complaint with the whistleblower board
11 as provided in chapter 2E.

12 ~~a.--A person who violates subsection 2 is liable to an~~
13 ~~aggrieved employee for affirmative relief including~~
14 ~~reinstatement, with or without back pay, or any other~~
15 ~~equitable relief the court deems appropriate, including~~
16 ~~attorney fees and costs.~~

17 ~~b.--When a person commits, is committing, or proposes to~~
18 ~~commit an act in violation of subsection 2, an injunction may~~
19 ~~be granted through an action in district court to prohibit the~~
20 ~~person from continuing such acts.--The action for injunctive~~
21 ~~relief may be brought by an aggrieved employee or the attorney~~
22 ~~general.~~

23 DIVISION IV

24 LEGISLATIVE OVERSIGHT

25 Sec. 21. Section 2.45, subsection 5, Code 2005, is amended
26 by adding the following new paragraph:

27 NEW PARAGRAPH. c. The committee shall implement a
28 systematic process of reviewing the reports required to be
29 filed with the legislative services agency pursuant to section
30 8F.4.

31 EXPLANATION

32 This bill concerns governmental accountability. The bill
33 contains provisions governing service contracts that expend
34 government funds, the authority of the auditor of state to
35 review entities receiving state or federal funds, and the

1 authority of the citizens' aide (ombudsman) to receive
2 complaints relative to private entities providing services
3 under contract with a governmental entity and employment-
4 related complaints concerning disclosures of information, and
5 the authority of the legislative oversight committee.

6 Division I of the bill concerns government accountability
7 relating to service contracts and oversight requirements for
8 agencies subject to the accountable government Act in Code
9 chapter 8E.

10 New Code chapter 8F establishes requirements governing any
11 service contract between a governmental entity and an
12 intergovernmental or private entity that involves federal or
13 state funds.

14 New Code section 8F.2 defines "oversight agency" as any
15 state unit or state government that contracts with and
16 disburses government money to a recipient entity for a service
17 contract. The bill defines a "service contract" as one
18 primarily for services in which the value of the contract or
19 contracts exceeds \$500,000. The bill also defines a
20 "recipient entity" as an intergovernmental entity or private
21 agency that receives local governmental, state, or federal
22 moneys from an oversight agency on a service contract.

23 New Code section 8F.3 provides information a recipient
24 entity shall certify that it can make available to the
25 oversight agency as a condition of entering into a service
26 contract with an oversight agency. The bill requires that the
27 information include documentation as to the governance of the
28 entity, provision of training to the governing body of the
29 entity as to its duties and obligations as a governing body,
30 information relative to the performances and compensation of
31 management employees and accounting practices, ethical and
32 professional standards for the entity including provisions on
33 nepotism and conflicts of interest, and a whistleblower policy
34 consistent with rules governing state employees. The new Code
35 section also requires the recipient entity to certify that the

1 entity is in full compliance with all applicable laws and
2 regulations including the requirements of this new Code
3 chapter.

4 New Code section 8F.4 provides additional ongoing
5 requirements for a recipient entity. The Code section
6 requires the recipient entity to submit an annual report to
7 the oversight agency as well as to the legislative services
8 agency which must include financial information, any
9 information concerning any external audits conducted in the
10 previous year, as well as any changes in the information
11 required pursuant to new Code section 8F.3. The new Code
12 section provides an exception to this annual report
13 requirement if the recipient entity is already required to
14 submit similar information pursuant to statute or rule so long
15 as this information is also submitted to the legislative
16 services agency. The new Code section further provides that
17 the recipient entity certify the accuracy of the information
18 in the annual report and provide supplemental information to
19 the oversight agency or the legislative services agency upon
20 request.

21 New Code section 8F.5 provides that an oversight agency has
22 the authority to terminate any contract if the recipient
23 entity fails to comply with the requirements of this new Code
24 chapter and that the contract contain provisions providing for
25 the recovery of government moneys expended if the entity fails
26 to comply.

27 Code section 8.47 is amended to provide that all service
28 contracts executed by a department be filed in an electronic
29 format with the department of administrative services.

30 Code section 8E.203, concerning strategic plans under the
31 accountable government Act, is amended to provide that
32 strategic plans include a description of methods agencies will
33 use to determine how public resources are used to achieve
34 public benefits.

35 Code section 8E.208, concerning performance measurements,

1 is amended to provide that performance measurements include an
2 assessment of whether agencies have adequate control
3 procedures as to whether public resources are being used
4 effectively.

5 Code section 28E.5, concerning requirements for entities
6 created under that chapter, is amended to provide that the
7 entity created shall comply with the requirements of Code
8 chapters 21 (open meetings) and 22 (public records) to the
9 same extent as the requirements are applicable to the public
10 agencies of the state that entered into the agreement creating
11 the entity. In addition, the entity is required to make all
12 salaries of employees public.

13 This division of the bill also provides that the
14 requirements for service contracts apply to such contracts
15 entered into or renewed on or after October 1, 2006.

16 Division II of the bill concerns the authority of the
17 auditor of state to conduct reviews of entities receiving
18 state or federal funds.

19 Code section 11.36 is stricken and rewritten and provides
20 that the auditor of state may, at the request of a department
21 or upon a determination by the auditor of state, review
22 information, and submit a report, covering the receipt and
23 expenditure of state or federal funds provided by a department
24 to any other entity to determine if the receipt and
25 expenditure of those funds by the entity is consistent with
26 the requirements governing those funds. The new Code section
27 provides that the applicable department reimburse the auditor
28 of state for the cost of providing the review required by this
29 section.

30 Division III of the bill expands the authority of the
31 office of citizens' aide. This division of the bill expands
32 the definition of the term "agency" within Code chapter 2C,
33 which governs the authority of the office of citizens' aide.
34 The division defines "agency" to include legal or
35 administrative entities created pursuant to Code chapter 28E,

1 private entities providing individualized or public services
2 pursuant to a contract with a governmental body of the state
3 or local government, and any officer, employee, or member of
4 any of those entities who is performing official duties or
5 providing services enumerated in a contract. The expansion of
6 the definition brings the activities of those entities and
7 individuals who are performing services pursuant to a contract
8 with state or local government under the jurisdiction of the
9 office of citizens' aide under Code section 2C.9.

10 In addition, Code section 2C.9, concerning the powers of
11 the citizens' aide, is amended to provide that the citizens'
12 aide provide administrative and investigative assistance to
13 the whistleblower board created by the bill and to provide
14 information to state employees and employers relative to the
15 rights of employees to disclose certain information.

16 New Code chapter 2E is created to establish a whistleblower
17 board.

18 New Code section 2E.1 establishes the whistleblower board
19 and provides that it is an independent agency within the
20 office of citizens' aide. The board shall investigate
21 complaints and conduct hearings relating to the disclosure of
22 certain information by state employees. The board consists of
23 three members none of whom shall be a state employee or an
24 employee of an entity receiving state funds. One member shall
25 be appointed by the legislative council, one member shall be
26 appointed by the majority leader of the senate in consultation
27 with the minority leader of the senate, and one member shall
28 be appointed by the speaker of the house in consultation with
29 the minority leader of the house. Members shall serve no
30 longer than a two-year term which shall expire at the
31 convening of the following general assembly. Members of the
32 board shall receive a per diem while conducting the business
33 of the board.

34 New Code section 2E.2 establishes the complaint procedure
35 for state employees who believe that adverse employment action

1 has been taken against them for disclosing information where
2 that action constitutes a violation of Code section 8A.417 or
3 70A.28. The section requires that an employee shall file a
4 complaint within 30 days of the adverse employment action.
5 The section provides that the board shall make an initial
6 determination as to the legal sufficiency of the complaint and
7 shall dismiss the complaint if it is not legally sufficient.
8 If the allegations are legally sufficient, the board shall
9 investigate the complaint. If after the investigation the
10 board determines there is probable cause that a violation has
11 occurred, the board shall conduct a contested case proceeding
12 relative to the complaint.

13 New Code section 2E.3 establishes the requirements of a
14 contested case proceeding conducted by the board and provides
15 that they shall be conducted in accordance with the
16 requirements of Code chapter 17A.

17 New Code section 2E.4 provides the penalties the board may
18 impose if a violation is found. The section allows the board
19 to order the violator to cease and desist from the violation
20 found and to reinstate the aggrieved employee with or without
21 back pay. The section also allows the board to grant any
22 other equitable relief.

23 New Code section 2E.5 allows for judicial review of the
24 board action in accordance with the requirements of Code
25 chapter 17A.

26 Code section 70A.28, subsection 5, is amended to require a
27 state employee to seek relief for a violation of this section
28 by filing a complaint with the whistleblower board created by
29 the bill. The bill strikes the ability to file a civil action
30 under this section for a violation.

31 Division IV of the bill provides that the oversight
32 committee of the legislative council review the annual
33 reports, or substitute reports, required to be filed by a
34 recipient entity pursuant to the requirements of Code section
35 8F.4 created in the bill.

SENATE FILE 2410

AN ACT

RELATING TO GOVERNMENT ACCOUNTABILITY AND CONCERNING SERVICE CONTRACT REQUIREMENTS, CONTRACTUAL REQUIREMENTS FOR CERTAIN ENTITIES RECEIVING PUBLIC MONEYS, REQUIREMENTS FOR JOINT AGREEMENTS INVOLVING GOVERNMENTAL ENTITIES, ADDITIONAL REVIEW BY THE AUDITOR OF STATE, THE AUTHORITY OF THE CITIZENS' AIDE, EMPLOYMENT RIGHTS OF EMPLOYEES MAKING A DISCLOSURE OF INFORMATION, AND THE AUTHORITY OF THE LEGISLATIVE OVERSIGHT COMMITTEE, AND INCLUDING AN IMPLEMENTATION PROVISION AND MAKING PENALTIES APPLICABLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

GOVERNMENT ACCOUNTABILITY

Section 1. NEW SECTION. 8F.1 PURPOSE.

This chapter is intended to create mechanisms to most effectively and efficiently monitor the utilization of public moneys by providing the greatest possible accountability for the expenditure of public moneys.

Sec. 2. NEW SECTION. 8F.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Agency" means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in section

7E.4, including but not limited to each principal central department enumerated in section 7E.5. However, "agency" does not mean the Iowa public employees' retirement system created under chapter 97B, the public broadcasting division of the department of education created under section 256.81, the statewide fire and police retirement system created under chapter 411, or an agricultural commodity promotion board subject to a producer referendum.

2. "Compensation" means payment of, or agreement to pay, any money, thing of value, or financial benefit conferred in return for labor or services rendered by an officer, employee, or other person plus the value of benefits including but not limited to casualty, disability, life, or health insurance, other health or wellness benefits, vacations, holidays, and sick leave, severance payments, retirement benefits, and deferred compensation.

3. "Intergovernmental entity" means any separate organization established in accordance with chapter 28E or established by any other agreement between an agency and any other governmental entity, whether federal, state, or local, and any department, division, unit or subdivision thereof. "Intergovernmental entity" does not include an organization established or agreement made in accordance with chapter 28E between state agencies.

4. "Oversight agency" means an agency that contracts with and disburses state or federal moneys to a recipient entity.

5. "Private agency" means an individual or any form of business organization, including a nonprofit organization, authorized under the laws of this state or any other state or under the laws of any foreign jurisdiction.

6. "Recipient entity" means an intergovernmental entity or a private agency that enters into a service contract with an oversight agency to provide services which will be paid for with local governmental, state, or federal moneys.

7. "Service" or "services" means work performed for an oversight agency or for its client.

8. a. "Service contract" means a contract for a service or services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision of services. When there is a contract for goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services with goods incidentally involved, a service contract exists. "Service contract" includes grants when the predominant factor, thrust, and purpose of the contract formalizing the grant is for the provision of services. For purposes of this chapter, a service contract only exists when an individual service contract or a series of service contracts entered into between an oversight agency and a recipient entity exceeds five hundred thousand dollars or when the grant or contract together with other grants or contracts awarded to the recipient entity by the oversight agency during the oversight agency's fiscal year exceeds five hundred thousand dollars in the aggregate.

b. "Service contract" does not mean any of the following:

(1) A contract that involves services related to transportation or the construction, reconstruction, improvement, repair, or maintenance of the transportation system.

(2) A contract concerning the public safety peace officers' retirement system created under chapter 97A, the judicial retirement system governed by chapter 602, article 9, or the deferred compensation plan established by the executive council pursuant to section 509A.12.

(3) A contract for services provided for the operation, construction, or maintenance of a public utility, combined public utility, or a city enterprise as defined by section 384.24.

(4) A contract for dual party relay service required by section 477C.3 or for the equipment distribution program established under the authority of section 477C.4.

(5) A contract for services provided from resources made available under Title XVIII, XIX, or XXI of the federal Social Security Act.

(6) A contract for a court-appointed attorney.

(7) A contract with a federally insured financial institution that is subject to mandatory periodic examinations by a state or federal regulator.

(8) Any allocation of state or federal moneys by the department of education to subrecipients on a formula or noncompetitive basis.

(9) A contract for services provided by a person subject to regulation under Title XIII of the Code.

(10) A contract for vendor services.

(11) A contract concerning an entity that has contracted with the state and is licensed and regulated by the insurance division of the department of commerce.

(12) A contract with outside counsel or special counsel executed by the executive council pursuant to section 13.3 or 13.7.

(13) A contract that is subject to competitive bidding for the construction, reconstruction, improvement, or repair of a public building or public improvement.

9. "Vendor services" means services or goods provided by a vendor that are required for the conduct of a state or federal program for an organization's own use or for the use of beneficiaries of the state or federal program and which are ancillary to the operation of the state or federal program under a service contract and not otherwise subject to compliance requirements of the state or federal program. For purposes of this subsection, "vendor" means a dealer, distributor, merchant, or other seller which provides goods and services within normal business operations, provides

similar goods or services to many different purchasers, and operates in a competitive environment.

Sec. 3. NEW SECTION. 8F.3 CONTRACTUAL REQUIREMENTS.

1. As a condition of entering into a service contract with an oversight agency, a recipient entity shall certify that the recipient has the following information available for inspection by the oversight agency and the legislative services agency:

a. Information documenting the legal status of the recipient entity, such as agreements establishing the entity pursuant to chapter 28E or other intergovernmental agreements, articles of incorporation, bylaws, or any other information related to the establishment or status of the entity. In addition, the information shall indicate whether the recipient entity is exempt from federal income taxes under section 501(c), of the Internal Revenue Code.

b. Information regarding the training and education received by the members of the governing body of the recipient entity relating to the duties and legal responsibilities of the governing body.

c. Information regarding the procedures used by the governing body of the recipient entity to do all of the following:

(1) Review the performance of management employees and establish the compensation of those employees.

(2) Review the recipient entity's internal controls relating to accounting processes and procedures.

(3) Review the recipient entity's compliance with the laws, rules, regulations, and contractual agreements applicable to its operations.

(4) Information regarding adopted ethical and professional standards of operation for the governing body and employees of the recipient entity and information concerning the implementation of these standards and the training of employees and members of the governing body on the standards.

The standards shall include but not be limited to a nepotism policy which shall provide, at a minimum, for disclosure of familial relationships among employees and between employees and members of the governing body, policies regarding conflicts of interest, standards of responsibility and obedience to law, fairness, and honesty.

d. Information regarding any policies adopted by the governing body of the recipient entity that prohibit taking adverse employment action against employees of the recipient entity who disclose information about a service contract to the oversight agency, the auditor of state, or the office of citizens' aide and that state whether those policies are substantially similar to the protection provided to state employees under section 70A.28. The information provided shall state whether employees of the recipient entity are informed on a regular basis of their rights to disclose information to the oversight agency, the office of citizens' aide, the auditor of state, or the office of the attorney general and the telephone numbers of those organizations.

2. The certification required by this section shall be signed by an officer and director of the recipient entity, two directors of the recipient entity, or the sole proprietor of the recipient entity, whichever is applicable, and shall state that the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of this chapter.

3. Prior to entering into a service contract with a recipient entity, the oversight agency shall determine whether the recipient entity can reasonably be expected to comply with the requirements of the service contract. If the oversight entity is unable to determine whether the recipient entity can reasonably be expected to comply with the requirements of the service contract, the oversight entity shall request such information from the recipient entity as described in subsection 1 to make a determination. If the oversight agency

determines from the information provided that the recipient entity cannot reasonably be expected to comply with the requirements of the service contract, the oversight agency shall not enter into the service contract.

Sec. 4. NEW SECTION. 8F.4 REPORTING REQUIREMENTS.

1. a. As a condition of continuing to receive state or federal moneys through an oversight agency for a service contract, a recipient entity shall file an annual report with the oversight agency and with the legislative services agency within ten months following the end of the recipient entity's fiscal year.

b. However, the annual report shall not be required to be filed under any of the following circumstances:

(1) The recipient entity reports information otherwise required to be included in an annual report described in subsection 2 to the oversight agency pursuant to federal or state statutes or rules. The information otherwise required to be reported to the oversight agency shall be filed with the legislative services agency.

(2) The recipient entity is recognized by the Internal Revenue Code as a nonprofit organization or entity and provides a copy of the internal revenue service form 990 for all fiscal years in which service contract revenues are reported.

2. The annual report required to be filed pursuant to this section shall contain the following:

a. Financial information relative to the expenditure of state and federal moneys for the prior year pursuant to the service contract. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.

b. Financial information relating to service contracts with the oversight agency during the preceding year, including the costs by category to provide the contracted services.

c. Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of the recipient entity covering the preceding year.

d. Corrective action taken or planned by the recipient entity in response to reportable conditions in internal control or material noncompliance with laws, rules, regulations, or contractual agreements included in external audit reports covering the preceding year.

e. Any changes in the information submitted in accordance with section 8F.3.

f. A certification signed by an officer and director of the recipient entity, two directors of the recipient entity, or the sole proprietor of the recipient entity, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of this chapter.

3. A recipient entity shall be required to submit such information as requested by the oversight agency or the legislative services agency relating to the entity's expenditure of state and federal moneys.

Sec. 5. NEW SECTION. 8F.5 ENFORCEMENT.

Any service contract awarded to a recipient entity shall provide that the oversight agency may terminate the service contract if the recipient entity, during the duration of the contract, fails to comply with the requirements of this chapter. In addition, the service contract shall provide a mechanism for the forfeiture and recovery of state or federal funds expended by a recipient entity in violation of the laws applicable to the expenditure of the money or the requirements of the service contract and this chapter.

Sec. 6. Section 8E.208, Code 2005, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Performance measurement is essential to ensuring adequate accountability over public resources and the exchange of public resources for desirable and acceptable public benefits. Performance measurement must include an assessment of whether agencies have adequate control procedures in place, and whether those control procedures are operating effectively, to determine that agencies are receiving or providing services of adequate quality, public resources are being used effectively and efficiently, and public resources are being used for appropriate and meaningful activities.

Sec. 7. Section 28E.6, Code 2005, is amended to read as follows:

28E.6 ADDITIONAL PROVISIONS.

1. If the agreement does not establish a separate legal entity to conduct the joint or co-operative undertaking, the agreement shall also include:

1- a. Provision for an administrator or a joint board responsible for administering the joint or co-operative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.

2- b. The manner of acquiring, holding and disposing of real and personal property used in the joint or co-operative undertaking.

2. The entity created or the administrator or joint board specified in the agreement shall be a governmental body for purposes of chapter 21 and a government body for purposes of chapter 22 unless the entity created or agreement includes public agencies from more than one state.

3. All proceedings of each regular, adjourned, or special meeting of the entity created or the administrator or joint board specified in the agreement, including the schedule of bills allowed, shall be published after adjournment of the meeting in a newspaper of general circulation within the geographic area served by the entity created or the

administrator or joint board specified in the agreement. The entity created or the administrator or joint board specified in the agreement shall furnish a copy of the proceedings to be published to the newspaper within one week following adjournment of the meeting. The publication of the schedule of bills allowed shall include a list of all salaries paid for services performed, showing the name of the person or firm performing the service and the amount paid. However, the names and gross salaries of persons regularly employed by the entity created or the administrator or joint board specified in the agreement shall only be published annually. This subsection shall not apply if the entity or the administrator or joint board specified in the agreement includes public agencies from more than one state.

Sec. 8. ELECTRONIC SUBMISSION OF CONTRACTS -- REPORT. The department of administrative services shall submit a report concerning steps necessary to provide for the electronic submission and retention of contracts by the department. The department shall submit the report, with its findings and recommendations, to the general assembly by December 1, 2006. The report shall identify any costs associated with implementing the recommendations of the report.

Sec. 9. IMPLEMENTATION PROVISION.

1. This division of this Act applies to service contracts entered into or renewed by an oversight agency, as those terms are defined in section 8F.2 as created in this division of this Act, on or after October 1, 2006.

2. The section of this division of this Act amending Code section 28E.6 is applicable on or after July 1, 2006.

DIVISION II

AUDITOR OF STATE DUTIES

Sec. 10. Section 11.36, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

11.36 REVIEW OF ENTITIES RECEIVING PUBLIC MONEYS.

1. The auditor of state may, at the request of a department, review, during normal business hours upon reasonable notice of at least twenty-four hours, the audit working papers prepared by a certified public accountant covering the receipt and expenditure of state or federal funds provided by the department to any other entity to determine if the receipt and expenditure of those funds by the entity is consistent with the laws, rules, regulations, and contractual agreements governing those funds. Upon completion of the review, the auditor of state shall report whether, in the auditor of state's judgment, the auditor of state believes the certified public accountant's working papers adequately demonstrate that the laws, rules, regulations, and contractual agreements governing the funds have been substantially complied with. If the auditor of state does not believe the certified public accountant's working papers adequately demonstrate that the laws, rules, regulations, and contractual agreements have been substantially complied with or believes a complete or partial reaudit is necessary based on the provisions of section 11.6, subsection 4, paragraph "a", or "b", the auditor of state shall notify the certified public accountant and the department of the actions the auditor of state believes are necessary to determine that the entity is in substantial compliance with those laws, rules, regulations, and contractual agreements. The auditor of state may assist departments with actions to determine that the entity is in substantial compliance. Departments shall reimburse the auditor of state for the cost of the review and any subsequent assistance provided by the auditor of state.

2. The auditor of state may, at the request of a department, review the records covering the receipt and expenditure of state or federal funds provided by the department to any other entity which has not been audited by a certified public accountant to determine if the receipt and expenditure of those funds by the entity is consistent with

the laws, rules, regulations, and contractual agreements governing those funds. Upon completion of the review, the auditor of state shall report whether, in the auditor of state's judgment, the auditor of state believes the entity adequately demonstrated that the laws, rules, regulations, and contractual agreements governing the funds have been substantially complied with. If the auditor of state does not believe the entity adequately demonstrated that the laws, rules, regulations, and contractual agreements have been substantially complied with, the auditor of state shall notify the department of the actions the auditor of state believes are necessary to determine that the entity is in substantial compliance with those laws, rules, regulations, and contractual agreements. The auditor of state may assist a department with actions to determine that the entity is in substantial compliance. Departments shall reimburse the auditor of state for the cost of the review and any subsequent assistance provided by the auditor of state.

3. When, in the auditor of state's judgment, the auditor of state finds that sufficient information is available to demonstrate that an entity receiving state or federal funds from a department may not have substantially complied with the laws, rules, regulations, and contractual agreements governing those funds, the auditor of state shall notify the department providing those funds to the entity of the auditor of state's finding. The department shall cooperate with the auditor of state to establish actions to be taken to determine whether substantial compliance with those laws, rules, regulations, and contractual agreements has been achieved by the entity receiving the state or federal funds from the department. Departments shall reimburse the auditor of state for any actions taken by the auditor of state to determine whether the entity has substantially complied with the laws, rules, regulations, and contractual agreements governing the funds provided by the department for costs expended after the date

the auditor of state notifies the department of an issue involving substantial compliance pursuant to the requirements of this subsection.

Sec. 11. NEW SECTION. 11.37 ACCESS TO CONFIDENTIAL INFORMATION.

1. The auditor of state, when conducting any audit or review required or permitted by this chapter, shall at all times have access to all information, records, instrumentalities, and properties used in the performance of the audited or reviewed entities' statutory duties or contractual responsibilities. All audited or reviewed entities shall cooperate with the auditor of state in the performance of the audit or review and make available the information, records, instrumentalities, and properties upon the request of the auditor of state.

2. If the information, records, instrumentalities, and properties sought by the auditor of state are required by law to be kept confidential, the auditor of state shall have access to the information, records, instrumentalities, and properties, but shall maintain the confidentiality of all such information and is subject to the same penalties as the lawful custodian of the information for dissemination of the information. However, the auditor of state shall not have access to the income tax returns of individuals.

DIVISION III
CITIZENS' AIDE DUTIES
-- DISCLOSURES OF
INFORMATION

Sec. 12. Section 2C.9, subsection 1, Code 2005, is amended to read as follows:

1. Investigate, on complaint or on the citizens' aide's own motion, any administrative action of any agency, without regard to the finality of the administrative action, except that the citizens' aide shall not investigate the complaint of an employee of an agency in regard to that employee's

employment relationship with the agency except as otherwise provided by this chapter. A communication or receipt of information made pursuant to the powers prescribed in this chapter shall not be considered an ex parte communication as described in the provisions of section 17A.17.

Sec. 13. NEW SECTION. 2C.11A SUBJECTS FOR INVESTIGATIONS -- DISCLOSURES OF INFORMATION.

The office of citizens' aide shall investigate a complaint filed by an employee who is not a merit system employee or an employee covered by a collective bargaining agreement and who alleges that adverse employment action has been taken against the employee in violation of section 70A.28, subsection 2. A complaint filed pursuant to this section shall be made within thirty calendar days following the effective date of the adverse employment action. The citizens' aide shall investigate the matter and shall issue findings relative to the complaint in an expeditious manner.

Sec. 14. Section 70A.28, subsection 2, Code 2005, is amended to read as follows:

2. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for a failure by that employee to inform the person that the employee made a disclosure of information permitted by this section, or for a disclosure of any information by that employee to a member or employee of the general assembly, a disclosure of information to the office of citizens' aide, or a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. However, an employee may be required to inform the

person that the employee made a disclosure of information permitted by this section if the employee represented that the disclosure was the official position of the employee's immediate supervisor or employer.

Sec. 15. Section 70A.28, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. Subsection 2 may also be enforced by an employee through an administrative action pursuant to the requirements of this subsection if the employee is not a merit system employee or an employee covered by a collective bargaining agreement. An employee eligible to pursue an administrative action pursuant to this subsection who is discharged, suspended, demoted, or otherwise reduced in pay and who believes the adverse employment action was taken as a result of the employee's disclosure of information that was authorized pursuant to subsection 2, may file an appeal of the adverse employment action with the public employment relations board within thirty calendar days following the later of the effective date of the action or the date a finding is issued to the employee by the office of the citizens' aide pursuant to section 2C.11A. The findings issued by the citizens' aide may be introduced as evidence before the public employment relations board. The employee has the right to a hearing closed to the public, but may request a public hearing. The hearing shall otherwise be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. If the public employment relations board finds that the action taken by the person appointing the employee was in violation of subsection 2, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. Decisions by the public employment relations board constitute final agency action.

DIVISION IV
LEGISLATIVE OVERSIGHT

Sec. 16. Section 2.45, subsection 5, Code 2005, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. The committee shall implement a systematic process of reviewing the reports required to be filed with the legislative services agency pursuant to section 8F.4.

JEFFREY M. LAMBERTI
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2410, Eighty-first General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2006

THOMAS J. VILSACK
Governor