

MAY 3 2006
Place On Calendar

HOUSE FILE 2798
BY COMMITTEE ON GOVERNMENT
OVERSIGHT

(SUCCESSOR TO HSB 779)

Passed House, Date _____ Passed Senate, 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:

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HF 2798

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.

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

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

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

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

35 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,or-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 state or federal moneys from an oversight
22 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.

H-8652

1 Amend House File 2798 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "DIVISION I

5 GOVERNMENT ACCOUNTABILITY

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

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

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

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

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

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

37 3. "Intergovernmental entity" means any separate
38 organization established in accordance with chapter
39 28E or established by any other agreement between an
40 agency and any other governmental entity, whether
41 federal, state, or local, and any department,
42 division, unit or subdivision thereof.

43 "Intergovernmental entity" does not include an
44 organization established or agreement made in
45 accordance with chapter 28E between state agencies.

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

49 5. "Private agency" means an individual or any
50 form of business organization, including a nonprofit

H-8652

1 organization, authorized under the laws of this state
2 or any other state or under the laws of any foreign
3 jurisdiction.

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

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

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

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

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

38 (2) A contract concerning the public safety peace
39 officers' retirement system created under chapter 97A,
40 the judicial retirement system governed by chapter
41 602, article 9, or the deferred compensation plan
42 established by the executive council pursuant to
43 section 509A.12.

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

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

1 of section 477C.4.

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

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

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

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

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

14 (10) A contract for vendor services.

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

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

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

26 9. "Vendor services" means services or goods
27 provided by a vendor that are required for the conduct
28 of a state or federal program for an organization's
29 own use or for the use of beneficiaries of the state
30 or federal program and which are ancillary to the
31 operation of the state or federal program under a
32 service contract and not otherwise subject to
33 compliance requirements of the state or federal
34 program. For purposes of this subsection, "vendor"
35 means a dealer, distributor, merchant, or other seller
36 which provides goods and services within normal
37 business operations, provides similar goods or
38 services to many different purchasers, and operates in
39 a competitive environment.

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

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

47 a. Information documenting the legal status of the
48 recipient entity, such as agreements establishing the
49 entity pursuant to chapter 28E or other
50 intergovernmental agreements, articles of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 NEW UNNUMBERED PARAGRAPH. Performance measurement
50 is essential to ensuring adequate accountability over

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

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

13 28E.6 ADDITIONAL PROVISIONS.

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

17 ~~1-~~ a. Provision for an administrator or a joint
18 board responsible for administering the joint or
19 co-operative undertaking. In the case of a joint
20 board, public agencies party to the agreement shall be
21 represented.

22 ~~2-~~ b. The manner of acquiring, holding and
23 disposing of real and personal property used in the
24 joint or co-operative undertaking.

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

31 3. All proceedings of each regular, adjourned, or
32 special meeting of the entity created or the
33 administrator or joint board specified in the
34 agreement, including the schedule of bills allowed,
35 shall be published after adjournment of the meeting in
36 a newspaper of general circulation within the
37 geographic area served by the entity created or the
38 administrator or joint board specified in the
39 agreement. The entity created or the administrator or
40 joint board specified in the agreement shall furnish a
41 copy of the proceedings to be published to the
42 newspaper within one week following adjournment of the
43 meeting. The publication of the schedule of bills
44 allowed shall include a list of all salaries paid for
45 services performed, showing the name of the person or
46 firm performing the service and the amount paid.
47 However, the names and gross salaries of persons
48 regularly employed by the entity created or the
49 administrator or joint board specified in the
50 agreement shall only be published annually. This

1 subsection shall not apply if the entity or the
2 administrator or joint board specified in the
3 agreement includes public agencies from more than one
4 state.

5 Sec. 8. ELECTRONIC SUBMISSION OF CONTRACTS --
6 REPORT. The department of administrative services
7 shall submit a report concerning steps necessary to
8 provide for the electronic submission and retention of
9 contracts by the department. The department shall
10 submit the report, with its findings and
11 recommendations, to the general assembly by December
12 1, 2006. The report shall identify any costs
13 associated with implementing the recommendations of
14 the report.

15 Sec. 9. IMPLEMENTATION PROVISION.

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

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

24 DIVISION II

25 AUDITOR OF STATE DUTIES

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

29 11.36 REVIEW OF ENTITIES RECEIVING PUBLIC MONEYS.

30 1. The auditor of state may, at the request of a
31 department, review, during normal business hours upon
32 reasonable notice of at least twenty-four hours, the
33 audit working papers prepared by a certified public
34 accountant covering the receipt and expenditure of
35 state or federal funds provided by the department to
36 any other entity to determine if the receipt and
37 expenditure of those funds by the entity is consistent
38 with the laws, rules, regulations, and contractual
39 agreements governing those funds. Upon completion of
40 the review, the auditor of state shall report whether,
41 in the auditor of state's judgment, the auditor of
42 state believes the certified public accountant's
43 working papers adequately demonstrate that the laws,
44 rules, regulations, and contractual agreements
45 governing the funds have been substantially complied
46 with. If the auditor of state does not believe the
47 certified public accountant's working papers
48 adequately demonstrate that the laws, rules,
49 regulations, and contractual agreements have been
50 substantially complied with or believes a complete or

1 partial reaudit is necessary based on the provisions
2 of section 11.6, subsection 4, paragraph "a", or "b",
3 the auditor of state shall notify the certified public
4 accountant and the department of the actions the
5 auditor of state believes are necessary to determine
6 that the entity is in substantial compliance with
7 those laws, rules, regulations, and contractual
8 agreements. The auditor of state may assist
9 departments with actions to determine that the entity
10 is in substantial compliance. Departments shall
11 reimburse the auditor of state for the cost of the
12 review and any subsequent assistance provided by the
13 auditor of state.

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

41 3. When, in the auditor of state's judgment, the
42 auditor of state finds that sufficient information is
43 available to demonstrate that an entity receiving
44 state or federal funds from a department may not have
45 substantially complied with the laws, rules,
46 regulations, and contractual agreements governing
47 those funds, the auditor of state shall notify the
48 department providing those funds to the entity of the
49 auditor of state's finding. The department shall
50 cooperate with the auditor of state to establish

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

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

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

27 2. If the information, records, instrumentalities,
 28 and properties sought by the auditor of state are
 29 required by law to be kept confidential, the auditor
 30 of state shall have access to the information,
 31 records, instrumentalities, and properties, but shall
 32 maintain the confidentiality of all such information
 33 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
 36 have access to the income tax returns of individuals.

37 DIVISION III

38 CITIZENS' AIDE DUTIES --

39 DISCLOSURES OF INFORMATION

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

42 1. Investigate, on complaint or on the citizens'
 43 aide's own motion, any administrative action of any
 44 agency, without regard to the finality of the
 45 administrative action, except that the citizens' aide
 46 shall not investigate the complaint of an employee of
 47 an agency in regard to that employee's employment
 48 relationship with the agency except as otherwise
 49 provided by this chapter. A communication or receipt
 50 of information made pursuant to the powers prescribed

1 in this chapter shall not be considered an ex parte
2 communication as described in the provisions of
3 section 17A.17.

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

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

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

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

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

45 NEW SUBSECTION. 5A. Subsection 2 may also be
46 enforced by an employee through an administrative
47 action pursuant to the requirements of this subsection
48 if the employee is not a merit system employee or an
49 employee covered by a collective bargaining agreement.
50 An employee eligible to pursue an administrative

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

27 DIVISION IV

28 LEGISLATIVE OVERSIGHT

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

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

35 2. Title page, by striking lines 1 through 9 and
36 inserting the following: "An Act relating to
37 government accountability and concerning service
38 contract requirements, contractual requirements for
39 certain entities receiving public moneys, requirements
40 for joint agreements involving governmental entities,
41 additional review by the auditor of state, the
42 authority of the citizens' aide, employment rights of
43 employees making a disclosure of information, and the
44 authority of the legislative oversight committee, and
45 including an implementation provision and making
46 penalties applicable."

By ALONS of Sioux

Success

02798

HSB 779

OVERSIGHT

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
GOVERNMENT OVERSIGHT BILL
BY CHAIRPERSON ALONS)

Passed House, Date _____ Passed Senate, 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:

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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.

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.