

# SENATE AMENDMENT NO. \_\_\_\_\_

Offered by \_\_\_\_\_ of \_\_\_\_\_

Amend SCS/Senate Bill No. 1007, Pages 32-35, Section 105.055, Line \_\_\_\_\_,

2 by striking all of said section and inserting in lieu thereof the  
3 following:

4 "105.055. 1. As used in this section, the following terms  
5 mean:

6 (1) "Disciplinary action", any dismissal, demotion,  
7 transfer, reassignment, suspension, reprimand, warning of  
8 possible dismissal or withholding of work, regardless of whether  
9 the withholding of work has affected or will affect the  
10 employee's compensation;

11 (2) "Public employee", any employee, volunteer, intern, or  
12 other individual performing work or services for a public  
13 employer;

14 (3) "Public employer", any state agency or office, the  
15 general assembly, any legislative or governing body of the state,  
16 any unit or political subdivision of the state, or any other  
17 instrumentality of the state.

18 2. No supervisor or appointing authority of any [state  
19 agency] public employer shall prohibit any employee of the  
20 [agency] public employer from discussing the operations of the  
21 [agency] public employer, either specifically or generally, with

1 any member of the legislature, state auditor, attorney general, a  
2 prosecuting or circuit attorney, a law enforcement agency, news  
3 media, the public, or any state official or body charged with  
4 investigating [such] any alleged misconduct described in this  
5 section.

6 [2.] 3. No supervisor or appointing authority of any [state  
7 agency] public employer shall:

8 (1) Prohibit a [state] public employee from or take any  
9 disciplinary action whatsoever against a [state] public employee  
10 for the disclosure of any alleged prohibited activity under  
11 investigation or any related activity, or for the disclosure of  
12 information which the employee reasonably believes evidences:

13 (a) A violation of any law, rule or regulation; or

14 (b) Mismanagement, a gross waste of funds or abuse of  
15 authority, violation of policy, waste of public resources,  
16 alteration of technical findings or communication of scientific  
17 opinion, breaches of professional ethical canons, or a  
18 substantial and specific danger to public health or safety, if  
19 the disclosure is not specifically prohibited by law; [or]

20 (2) Require [any such] a public employee to give notice to  
21 the supervisor or appointing authority prior to [making any such  
22 report] disclosing any activity described in subdivision (1) of  
23 this subsection; or

24 (3) Prevent a public employee from testifying before a  
25 court, administrative body, or legislative body regarding the  
26 alleged prohibited activity or disclosure of information.

27 [3.] 4. This section shall not be construed as:

28 (1) Prohibiting a supervisor or appointing authority from

1 requiring that [an] a public employee inform the supervisor or  
2 appointing authority as to legislative requests for information  
3 to the [agency] public employer or the substance of testimony  
4 made, or to be made, by the public employee to legislators on  
5 behalf of the [employee to legislators on behalf of the agency]  
6 public employer;

7 (2) Permitting [an] a public employee to leave the  
8 employee's assigned work areas during normal work hours without  
9 following applicable rules and regulations and policies  
10 pertaining to leaves, unless the public employee is requested by  
11 a legislator or legislative committee to appear before a  
12 legislative committee;

13 (3) Authorizing [an] a public employee to represent [the  
14 employee's] his or her personal opinions as the opinions of a  
15 [state agency] public employer; or

16 (4) Restricting or precluding disciplinary action taken  
17 against a [state] public employee if: the employee knew that the  
18 information was false; the information is closed or is  
19 confidential under the provisions of the open meetings law or any  
20 other law; or the disclosure relates to the employee's own  
21 violations, mismanagement, gross waste of funds, abuse of  
22 authority or endangerment of the public health or safety.

23 [4. As used in this section, "disciplinary action" means  
24 any dismissal, demotion, transfer, reassignment, suspension,  
25 reprimand, warning of possible dismissal or withholding of work,  
26 whether or not the withholding of work has affected or will  
27 affect the employee's compensation.]

28 5. In addition to any other remedies provided by law, any

1 state employee may file an administrative appeal whenever the  
2 employee alleges that disciplinary action was taken against the  
3 employee in violation of this section. The appeal shall be filed  
4 with the administrative hearing commission[; provided that the  
5 appeal shall be filed with the appropriate agency review board or  
6 body of nonmerit agency employers which have established appeal  
7 procedures substantially similar to those provided for merit  
8 employees in subsection 5 of section 36.390]. The appeal shall  
9 be filed within [thirty days] one year of the alleged  
10 disciplinary action. Procedures governing the appeal shall be in  
11 accordance with chapter 536. If the commission [or appropriate  
12 review body] finds that disciplinary action taken was  
13 [unreasonable] taken for any reason that violates this section,  
14 the commission [or appropriate review body] shall modify or  
15 reverse the agency's action and order such relief for the  
16 employee as the commission considers appropriate. If the  
17 commission finds a violation of this section, it may review and  
18 recommend to the appointing authority that the violator be  
19 suspended on leave without pay for not more than thirty days or,  
20 in cases of willful or repeated violations, may review and  
21 recommend to the appointing authority that the violator forfeit  
22 the violator's position as a state officer or employee and  
23 disqualify the violator for appointment to or employment as a  
24 state officer or employee for a period of not more than two  
25 years. The decision of the commission [or appropriate review  
26 body] in such cases may be appealed by any party pursuant to law.

27 6. Each [state agency] public employer shall prominently  
28 post a copy of this section in locations where it can reasonably

1 be expected to come to the attention of all employees of the  
2 ~~[agency]~~ public employer.

3 7. (1) In addition to the remedies in subsection ~~[6]~~ 5 of  
4 this section or any other remedies provided by law, a person who  
5 alleges a violation of this section may bring a civil action  
6 against the public employer for damages within ~~[ninety days]~~ one  
7 year after the occurrence of the alleged violation.

8 (2) A civil action commenced pursuant to this subsection  
9 may be brought in the circuit court for the county where the  
10 alleged violation occurred, the county where the complainant  
11 resides, or the county where the person against whom the civil  
12 complaint is filed resides. A person commencing such action may  
13 request a trial by jury.

14 (3) ~~[An]~~ A public employee ~~[must]~~ shall show by clear and  
15 convincing evidence that he or she or a person acting on his or  
16 her behalf has reported or was about to report, verbally or in  
17 writing, a prohibited activity or a suspected prohibited  
18 activity. Upon such a showing, the burden shall be on the public  
19 employer to demonstrate that the disciplinary action was not the  
20 result of such a report.

21 (4) A court, in rendering a judgment in an action brought  
22 pursuant to this section, shall order, as the court considers  
23 appropriate, actual damages and may also award the complainant  
24 all or a portion of the costs of litigation, including reasonable  
25 attorney fees.

26 8. If the alleged misconduct is related to the receipt and  
27 expenditures of public funds, a public employee alleging that  
28 disciplinary action was taken against the employee in violation  
29 of this section may request the state auditor to investigate the

1 alleged misconduct and whether the disciplinary action was taken  
2 in violation of this section. If the state auditor uses his or  
3 her discretion to make such an investigation, the time to appeal  
4 such disciplinary action under subsections 5 and 7 of this  
5 section shall be the later of one year from the date of the  
6 alleged disciplinary action or ninety days following the release  
7 of the state auditor's report.

8 9. The provisions of this section shall apply to public  
9 employees, notwithstanding any provisions of section 213.070 and  
10 section 285.575 to the contrary.

11 105.725. Any person who obtains a claim or final judgment  
12 for a payment to be made out of the state legal expense fund  
13 shall not be offered or required to sign any confidentiality  
14 agreement stating that he or she will not discuss his or her  
15 claim or final judgment or stating that if he or she does discuss  
16 such claim or final judgment, he or she will waive any right to  
17 moneys from the state legal expense fund. If a confidentiality  
18 agreement is offered to a person in violation of this section and  
19 such agreement is signed, such signed agreement shall be  
20 unenforceable."; and

21 Further amend the title and enacting clause accordingly.