

By Senator Fasano

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1 A bill to be entitled

2 An act relating to public records and meetings;
3 amending s. 112.324, F.S.; providing an exemption from
4 public-records requirements for a determination of
5 legal sufficiency relating to an alleged violation of
6 part III of ch. 112, F.S., the Code of Ethics for
7 Public Officers and Employees; providing an exemption
8 from public-meetings requirements for any proceeding
9 relating to such determination; authorizing the
10 Commission on Ethics and its staff to share
11 investigative information with criminal investigative
12 agencies; providing for legislative review and repeal
13 of the exemptions under the Open Government Sunset
14 Review Act; providing a statement of public necessity;
15 providing a contingent effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Subsection (2) of section 112.324, Florida
20 Statutes, is amended to read:

21 112.324 Procedures on complaints of violations; public
22 records and meeting exemptions.-

23 (2) (a) The complaint and records relating to a written the
24 complaint, other determination of legal sufficiency to conduct
25 an investigation of an alleged breach of the public trust as
26 provided under subsection (1), or to a any preliminary
27 investigation held by the commission or its agents, by a
28 Commission on Ethics and Public Trust established by a any
29 county as defined in s. 125.011(1) or a by any municipality as

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30 defined in s. 165.031, or by a ~~any~~ county or municipality that
31 has established a local investigatory process to enforce more
32 stringent standards of conduct and disclosure requirements as
33 provided in s. 112.326 are confidential and exempt from ~~the~~
34 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
35 Constitution.

36 (b) Any proceeding conducted by the commission, a
37 Commission on Ethics and Public Trust, or a county or
38 municipality that has established such local investigatory
39 process, pursuant to a complaint, other determination that there
40 is an indication of a breach of the public trust as provided in
41 subsection (1), or a preliminary investigation, is exempt from
42 ~~the provisions of~~ s. 286.011, s. 24(b), Art. I of the State
43 Constitution, and s. 120.525.

44 (c) The exemptions in paragraphs (a) and (b) apply until
45 the complaint or other alleged indication of a breach of the
46 public trust is dismissed as legally insufficient; ~~;~~ until the
47 alleged violator requests in writing that the ~~such~~ records and
48 proceedings be made public; until the commission determines that
49 it will not investigate the complaint, publicly disseminated
50 information, or referral; ~~;~~ or until the commission, a Commission
51 on Ethics and Public Trust, or a county or municipality that has
52 established such local investigatory process determines, based
53 on an ~~such~~ investigation, whether probable cause exists to
54 believe that a violation has occurred. In no event shall a
55 complaint under this part against a candidate in any general,
56 special, or primary election be filed or any intention of filing
57 such a complaint be disclosed on the day of any such election or
58 within the 5 days immediately preceding the date of the

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59 election.

60 (d) The confidentiality requirements of this subsection do
61 not prohibit the commission, a Commission on Ethics and Public
62 Trust, or a county or municipality that has established a local
63 investigatory process from sharing investigative information
64 with a criminal investigative agency.

65 (e)~~(d)~~ This subsection is subject to the Open Government
66 Sunset Review Act in accordance with s. 119.15 and shall stand
67 repealed on October 2, 2017 ~~2015~~, unless reviewed and saved from
68 repeal through reenactment by the Legislature.

69 Section 2. (1) The Legislature finds that it is a public
70 necessity that a determination of legal sufficiency to conduct
71 an investigation of an alleged breach of the public trust under
72 part III of chapter 112, Florida Statutes, the Code of Ethics
73 for Public Officers and Employees, pursuant to publicly
74 disseminated information or a referral from a public official be
75 held confidential and exempt from s. 119.07(1), Florida
76 Statutes, and s. 24(a), Article I of the State Constitution
77 until the Commission on Ethics, a Commission on Ethics and
78 Public Trust, or a county or municipality dismisses such
79 allegation as legally insufficient, determines that it will not
80 conduct an investigation, or determines, based on an
81 investigation, whether probable cause exists to believe that a
82 violation has occurred. This exemption is necessary because the
83 release of information that is subsequently found to be
84 insufficient and without legal basis could potentially be
85 defamatory to the individual under investigation or cause
86 unwarranted damage to his or her good name or reputation.

87 (2) In addition, the Legislature finds that it is a public

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88 necessity that any proceeding conducted by the Commission on
89 Ethics, a Commission on Ethics and Public Trust, or a county or
90 municipality pursuant to publicly disseminated information or a
91 referral from a public official be exempt from s. 286.011,
92 Florida Statutes, s. 24(b), Article I of the State Constitution,
93 and s. 120.525, Florida Statutes, so that the administration of
94 such proceeding is not otherwise significantly impaired. The
95 exemption of these proceedings from public-meetings requirements
96 minimizes the possibility of unnecessary scrutiny by the public
97 or media of the individual under investigation and his or her
98 family before there is a determination of probable cause.
99 Furthermore, the Legislature has already recognized the
100 importance of the aforementioned public-records and public-
101 meetings exemptions by exempting the records and meetings of the
102 Commission on Ethics, a Commission on Ethics and Public Trust,
103 or a county or municipality conducting such a proceeding.

104 Section 3. This act shall take effect July 1, 2012, only if
105 Senate Bill ____ or similar legislation is adopted in the same
106 legislative session or an extension thereof and becomes law.