

By Senator Brandes

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 112.3188, F.S.; revising an exemption from public
4 records requirements for the identities of informants
5 and investigatory information held by the Chief
6 Inspector General, agency inspectors general, and
7 other appropriate local officials; revising
8 requirements providing for the disclosure of
9 confidential information to specified persons or
10 entities; conforming cross-references; providing for
11 future legislative review and repeal of the exemption;
12 providing a statement of public necessity; providing a
13 contingent effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 112.3188, Florida Statutes, is amended
18 to read:

19 112.3188 Confidentiality of information given to the Chief
20 Inspector General, internal auditors, inspectors general, local
21 chief executive officers, or other appropriate local officials.—

22 (1) The name or identity of any individual who discloses in
23 good faith to the Chief Inspector General or an agency inspector
24 general, a local chief executive officer, or other appropriate
25 local official information that alleges that an employee or
26 agent of an agency or independent contractor:

27 (a) Has violated or is reasonably suspected of having
28 violated any federal, state, or local law, rule, or regulation,
29 thereby creating and presenting a substantial and specific
30 danger to the public's health, safety, or welfare; or

31 (b) Has committed an act of gross mismanagement, gross
32 misconduct, ~~malfeasance, misfeasance~~, gross waste of public

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33 funds, or gross neglect of duty,
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35 may not be disclosed to anyone other than a member of the Chief
36 Inspector General's, agency inspector general's, internal
37 auditor's, local chief executive officer's, or other appropriate
38 local official's staff, or the staff of the Florida Commission
39 on Human Relations, without the written consent of the
40 individual, unless the Chief Inspector General, internal
41 auditor, agency inspector general, local chief executive
42 officer, or other appropriate local official determines that:
43 the disclosure of the individual's identity is necessary to
44 prevent a substantial and specific danger to the public's
45 health, safety, or welfare, or to prevent the imminent
46 commission of a crime, and the information is disclosed only to
47 persons who are in a position to prevent the danger to the
48 public's health, safety, or welfare or to prevent the imminent
49 commission of a crime; or the disclosure of the individual's
50 identity is unavoidable and absolutely necessary during the
51 course of the audit, evaluation, or investigation. The
52 disclosure of the individual's identity may also be authorized
53 if the individual consents in writing to attach general comments
54 signed by such individual to the final report required pursuant
55 to s. 112.3189(6) (b) .

56 (2) (a) Except as specifically authorized by s. 112.3189,
57 all information received by the Chief Inspector General or an
58 agency inspector general or information produced or derived from
59 fact-finding or other investigations conducted by the Florida
60 Commission on Human Relations or the Department of Law
61 Enforcement is confidential and exempt from s. 119.07(1) and s.

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62 24(a), Art. I of the State Constitution, if the information is
63 being received or derived from allegations as set forth in
64 paragraph (1)(a) or paragraph (1)(b),~~7~~ and an investigation is
65 active.

66 (b) All information received by a local chief executive
67 officer or appropriate local official or information produced or
68 derived from fact-finding or investigations conducted pursuant
69 to the administrative procedure established by ordinance by a
70 local government as authorized by s. 112.3187(7)(b) ~~s.~~
71 ~~112.3187(8)(b)~~ is confidential and exempt from s. 119.07(1) and
72 s. 24(a), Art. I of the State Constitution, if the information
73 is being received or derived from allegations as set forth in
74 paragraph (1)(a) or paragraph (1)(b) and an investigation is
75 active.

76 (c) Information deemed confidential under this section may
77 be disclosed by the Chief Inspector General, agency inspector
78 general, internal auditor, the Florida Commission on Human
79 Relations, local chief executive officer, or other appropriate
80 local official receiving the information if the recipient
81 determines that the disclosure of the information is absolutely
82 necessary to prevent a substantial and specific danger to the
83 public's health, safety, or welfare or to prevent the imminent
84 commission of a crime. Information disclosed under this
85 subsection may be disclosed only to persons who are in a
86 position to prevent the danger to the public's health, safety,
87 or welfare or to prevent the imminent commission of a crime
88 based on the disclosed information.

- 89 1. An investigation is active under this section if:
90 a. It is an ongoing investigation or inquiry or collection

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91 of information and evidence and is continuing with a reasonable,
92 good faith anticipation of resolution in the foreseeable future;
93 or

94 b. All or a portion of the matters under investigation or
95 inquiry are active criminal intelligence information or active
96 criminal investigative information as defined in s. 119.011.

97 2. Notwithstanding sub-subparagraph 1.a., an investigation
98 ceases to be active when:

99 a. The written report required under s. 112.3189(9) has
100 been sent by the Chief Inspector General to the recipients named
101 in s. 112.3189(9);

102 b. It is determined that an investigation is not necessary
103 under s. 112.3189(5); or

104 c. A final decision has been rendered by the local
105 government or by the Division of Administrative Hearings
106 pursuant to s. 112.3187(7)(b) ~~s. 112.3187(8)(b)~~.

107 3. Notwithstanding paragraphs (a), (b), and this paragraph,
108 information or records received or produced under this section
109 which are otherwise confidential under law or exempt from
110 disclosure under chapter 119 retain their confidentiality or
111 exemption.

112 4. Any person who willfully and knowingly discloses
113 information or records made confidential under this subsection
114 commits a misdemeanor of the first degree, punishable as
115 provided in s. 775.082 or s. 775.083.

116 (3) This section is subject to the Open Government Sunset
117 Review Act in accordance with s. 119.15 and shall stand repealed
118 on October 2, 2021, unless reviewed and saved from repeal
119 through reenactment by the Legislature.

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120 Section 2. The Legislature finds that it is a public
121 necessity that the name and identity of any individual who
122 discloses in good faith to the Chief Inspector General or an
123 agency inspector general, a local chief executive officer, or
124 other appropriate local official information that alleges an
125 employee or agent of an agency or independent contractor has
126 violated or is reasonably suspected of having violated any
127 federal, state, or local law, rule, or regulation or has
128 committed an act of gross mismanagement, gross misconduct, gross
129 waste of public funds, or gross neglect of duty, and all
130 information produced or derived from fact-finding or the
131 investigation of such allegations, be held confidential and
132 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
133 Article I of the State Constitution while the investigation is
134 active. Such whistleblower information and the names or
135 identities of the individuals disclosing such information, if
136 publicly available, could contribute to cover-up or retaliatory
137 action, impede the effective and efficient operation of
138 investigatory functions, or cause a chilling effect that deters
139 such individuals, including employees or former employees of an
140 agency or an agency's independent contractor, from reporting
141 observed occurrences of such violations, mismanagement,
142 misconduct, waste of public funds, or neglect of duty.

143 Section 3. This act shall take effect on the same date that
144 SB ____ or similar legislation takes effect, if such legislation
145 is adopted in the same legislative session or an extension
146 thereof and becomes a law.