

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; providing for future legislative review and  
 11          repeal of the exemption; providing a statement of  
 12          public necessity; providing a contingent effective  
 13          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  
 23           in good faith to the Chief Inspector General or an agency  
 24           inspector general, a local chief executive officer, or other  
 25           appropriate local official information that alleges that an  
 26           employee or 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; gross malfeasance;~~;~~ gross misfeasance;~~;~~ gross waste  
 33 of public funds; Medicaid fraud or program abuse;~~;~~ or gross  
 34 neglect of duty on the part of an agency, public officer, or  
 35 employee,

36  
 37 may not be disclosed to anyone other than a member of the Chief  
 38 Inspector General's, agency inspector general's, internal  
 39 auditor's, local chief executive officer's, or other appropriate  
 40 local official's staff, or staff of the Florida Commission on  
 41 Human Relations, without the written consent of the individual,  
 42 unless the Chief Inspector General, internal auditor, agency  
 43 inspector general, local chief executive officer, or other  
 44 appropriate local official, or staff of the Florida Commission  
 45 on Human Relations, determines that~~+~~ the disclosure of the  
 46 individual's identity is necessary to prevent a substantial and  
 47 specific danger to the public's health, safety, or welfare, or  
 48 to prevent the imminent commission of a crime, and the  
 49 information is disclosed only to persons who are in a position  
 50 to prevent the danger to the public's health, safety, or  
 51 welfare, or to prevent the imminent commission of a crime; or  
 52 the disclosure of the individual's identity is unavoidable and

53 absolutely necessary during the course of the audit, evaluation,  
54 or investigation. If the individual provides signed comments to  
55 the final report pursuant to s. 112.3189(6)(b), unless necessary  
56 pursuant to 112.3188(1)(b), the individual's identity may not be  
57 disclosed without the written consent of the individual.

58 (2)(a) Except as specifically authorized by s. 112.3189,  
59 all information received by the Chief Inspector General or an  
60 agency inspector general or information produced or derived from  
61 fact-finding or other investigations conducted by the Florida  
62 Commission on Human Relations or the Department of Law  
63 Enforcement is confidential and exempt from s. 119.07(1) and s.  
64 24(a), Art. I of the State Constitution, if the information is  
65 being received or derived from allegations as set forth in  
66 paragraph (1)(a) or paragraph (1)(b), and an investigation is  
67 active.

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

78 (c) Information deemed confidential under this section may

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

91 | 1. An investigation is active under this section if:

92 | a. It is an ongoing investigation or inquiry or collection  
93 | of information and evidence and is continuing with a reasonable,  
94 | good faith anticipation of resolution in the foreseeable future;  
95 | or

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

99 | 2. Notwithstanding sub-subparagraph 1.a., an investigation  
100 | ceases to be active when:

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

104 | b. It is determined that an investigation is not necessary

105 | under s. 112.3189(5); or

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

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

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

118 |       5. An individual's identity may be disclosed if the  
 119 | individual:

120 |       a. Files a qui tam action under s. 68.083 and the court  
 121 | unseals the related complaint; or

122 |       b. Voluntarily discloses his or her identity outside of  
 123 | the privileged communications described in ss. 90.502-90.5055.

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

128 |       Section 2. The Legislature finds that it is a public  
 129 | necessity that the name and identity of any individual who  
 130 | discloses in good faith to the Chief Inspector General or an

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131 agency inspector general, a local chief executive officer, staff  
132 of the Florida Commission on Human Relations, or other  
133 appropriate local official information that alleges an employee  
134 or agent of an agency or independent contractor has violated or  
135 is reasonably suspected of having violated any federal, state,  
136 or local law, rule, or regulation or has committed an act of  
137 gross mismanagement; gross misconduct; gross malfeasance; gross  
138 misfeasance; gross waste of public funds; Medicaid fraud or  
139 program abuse; or gross neglect of duty, and all information  
140 produced or derived from fact-finding or the investigation of  
141 such allegations, be held confidential and exempt from s.  
142 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
143 State Constitution while the investigation is active. Such  
144 whistleblower information and the names or identities of the  
145 individuals disclosing such information, if publicly available,  
146 could contribute to cover-up or retaliatory action, impede the  
147 effective and efficient operation of investigatory functions, or  
148 cause a chilling effect that deters such individuals, including  
149 employees or former employees of an agency or an agency's  
150 independent contractor, from reporting observed occurrences of  
151 such violations, gross mismanagement, gross misconduct, gross  
152 malfeasance, gross misfeasance, gross waste of public funds,  
153 Medicaid fraud or program abuse, or gross neglect of duty.

154 Section 3. This act shall take effect on the same date  
155 that HB 1399 or similar legislation takes effect, if such  
156 legislation is adopted in the same legislative session or an

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157 | extension thereof and becomes a law. |