

Section 812.081, F.S., defines the term “trade secret” to mean “the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it.” The term “includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.” This statute further provides that a trade secret is considered to be:

- secret;
- of value;
- for use or in use by the business; and
- of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes (s. 812.081(1)(c), F.S.). Florida has in place a number of public records exemptions relating to trade secrets. (See *Government-In-The-Sunshine Manual*, 1996 edition, at 84-85.)

Entertainment Industry Promotion and Development

Currently, the Office of Tourism, Trade, and Economic Development (OTTED) contracts with a private, not-for-profit corporation, known as the Florida Entertainment Industry Council, Inc. (FEIC), for assistance in the promotion and development of the entertainment industry in Florida (ss. 288.1228 and 14.2015(2)(a), F.S.). The contract naming the FEIC as the State’s designee refers to a contracted services contract for specifics on what activities the FEIC is to perform for remuneration. This second contract stipulates that the FEIC will receive remuneration for the publication of a directory and four quarterly magazines and that the FEIC will make public the records it maintains that directly relate to these publications. The contract specifies that the FEIC is not under a contractual obligation to disclose corporate records or documents unrelated to the services performed under the contract.

Other agents of the state which perform economic development promotion and development functions have been afforded a limited exemption from the public records law under s. 288.075, F.S., for information related to the identity and intentions of private companies or persons interested in locating or expanding their businesses in Florida. In addition, some of the state’s economic development incentive programs provide for confidentiality of trade secrets or similar sensitive business information. (See, e.g., s. 288.1066, F.S., providing confidentiality under the tax refund programs for qualified target industry businesses and qualified defense contractors.)

III. Effect of Proposed Changes:

This committee substitute provides a limited exemption from the public records requirements for records of the Entertainment Industry Commissioner and of the Entertainment Florida Council, or

other entity authorized to perform the council's functions, that contain the identity of an entertainment industry private corporation, partnership, or person seeking to locate, relocate, or expand business activities in this state. The committee substitute also provides the same level of confidentiality for trade secrets, as defined by s. 812.081, F.S., and for information concerning the plans, intentions, or interests of such businesses or persons to locate, relocate, or expand in Florida. The business or person seeking the confidentiality must request it in writing.

The committee substitute does provide that the corporation's, partnership's, or person's identity may be released when that party retains a business location in the state. Other records covered by the exemption provided in this committee substitute may be released if such records have been otherwise released by the party requesting confidentiality.

The committee substitute also provides a public necessity statement outlining reasons for the exemption.

Section 3 of the committee substitute specifies that the measure shall take effect on the same date as Senate Bill 1612 or similar legislation creating the Entertainment Florida Council and the position of Entertainment Industry Commissioner.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This committee substitute appears to comply with the requirements of s. 24, Art. I of the Florida Constitution that general laws providing for exemptions from the public records: 1) state with specificity the public necessity justifying the exemption and be no broader than necessary to accomplish the stated purpose, 2) contain no provisions unrelated to public records exemptions or enforcement of such exemptions, and 3) relate to one subject only.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Entertainment industry entities that are considering Florida as a location for business activities will be able to request confidentiality for their identities, trade secrets, and location intentions, thus helping to safeguard against the potential disclosure of their business plans and information to competitors.

C. Government Sector Impact:

This committee substitute does not appear to generate significant additional costs for an agency of government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This committee substitute is a companion measure to Committee Substitute for Senate Bill 1612, which, among other provisions, creates an Entertainment Florida Council and the position of Entertainment Industry Commissioner for the promotion and development of the entertainment industry in Florida.

VIII. Amendments:

None.