

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 55 Trade Secrets
SPONSOR(S): Criminal Justice Subcommittee; Pilon
TIED BILLS: CS/HB 57 **IDEN./SIM. BILLS:** CS/SB 180

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Lloyd
3) Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
4) Judiciary Committee			

SUMMARY ANALYSIS

Florida law currently imposes criminal penalties for a variety of acts relating to the theft, unauthorized copying, and misappropriation of trade secrets. For many of these statutes, the term "trade secret" is defined in accordance with s. 812.081, F.S., to include "any scientific, technical, or commercial information" that otherwise qualifies as trade secret.

The bill amends the definition of "trade secret" to mean "any scientific, technical, or commercial information, *including financial information*," that otherwise qualifies as trade secret. The bill reenacts ss. 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4), F.S., to incorporate the changes to the definition of "trade secret."

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015, and determined this bill will have an insignificant prison bed impact on the Department of Corrections (an increase of 10 or fewer beds). The bill also creates a new first degree misdemeanor; therefore, it may increase commitments to local jails.

This bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law currently prohibits a variety of acts relating to trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony¹ for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that is a trade secret which is residing or existing internal or external to a computer, computer system, computer network, or electronic device.²
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article representing a trade secret, when done with an intent to:
 - Deprive or withhold from the trade secret's owner the control of a trade secret, or
 - Appropriate a trade secret to his or her own use or to the use of another.
- Section 581.199, F.S., makes it a first degree misdemeanor³ for a designated employee, inspector, or collaborator of the Division of Plant Industry of the Department of Agriculture and Consumer Services or the United States Department of Agriculture who, in an official capacity obtains under ch. 581, F.S., any information entitled to protection as a trade secret, to use such information for personal gain or to reveal it to an unauthorized person.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets;⁴ however, a small number of these statutes provide other types of protections, such as procedural safeguards and civil remedies.⁵

For purposes of the above-described statutes, the term "trade secret" is defined in accordance with s. 812.081(1)(c), F.S., as:

[T]he 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. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. 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.

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

² The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.

³ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁴ ss. 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

⁵ ss. 721.071 and 812.035, F.S.

Effect of the Bill

The bill amends the definition of “trade secret” in s. 812.081(1)(c), F.S., to mean “any scientific, technical, or commercial information, *including financial information*, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.” As such, the criminal offenses described above will apply to a clarified list of trade secret information.

Florida law contains a variety of provisions that cross-reference the definition of “trade secret” in s. 812.081(1)(c), F.S. The bill reenacts the following provisions to incorporate the changes made by the bill to the definition of “trade secret”:

- Section 581.199, F.S., prohibits any unauthorized representative from using trade secret information for personal gain or to reveal it to an unauthorized person.
- Section 721.071(1), F.S., provides requirements for filing trade secret information with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.
- Section 812.035, F.S., provides civil remedies for violations of ss. 812.012-812.037, F.S., or s. 812.081, F.S.
- Section 815.04(4), F.S., prohibits a person from willfully, knowingly, and without authorization disclosing or taking specified data, programs, or supporting documentation that is trade secret or confidential.

B. SECTION DIRECTORY:

Section 1. Amends s. 812.081, F.S., relating to trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.

Section 2. Reenacts s. 581.199, F.S., relating to confidential business information.

Section 3. Reenacts s. 721.071(1), F.S., relating to trade secrets.

Section 4. Reenacts s. 812.035(1), (2), (5), (7), (8), (10), and (11), F.S., relating to civil remedies; limitation on civil and criminal actions.

Section 5. Reenacts s. 815.04(4), F.S., relating to offenses against intellectual property; public records exemption.

Section 6. Provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015, and determined this bill will have an insignificant prison bed impact on the Department of Corrections (an increase of 10 or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill makes it a first degree misdemeanor for certain persons to use trade secret information in specified ways; therefore, it may increase the application of this offense, and increase commitments to local jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On September 16, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added reenactments of ss. 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4), F.S., to incorporate the changes made by the bill to the definition of "trade secret" in s. 812.081, F.S.