

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 57	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Criminal Justice Subcommittee; Pilon	111 Y's	7 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 182; CS/HB 55	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/HB 57 passed the House on January 27, 2016, as CS/CS/SB 182.

Florida law contains a variety of provisions making trade secret information exempt or confidential and exempt from public records. Many of these statutes define the term "trade secret" in accordance with s. 812.081(1)(c), F.S. CS/HB 55, which is tied to this bill, expands the definition of the term "trade secret" contained in s. 812.081(1)(c), F.S., to include financial information.

This bill, which is linked to the passage of CS/HB 55 or similar legislation, amends ss. 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2) and (3)(b), 403.73, 499.012(8)(g) and (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 601.10(8), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.04(3) and (6), F.S., and reenacts 815.04(3), F.S., to incorporate the changes to the definition of "trade secret" made by CS/HB 55. The sections provide public record exemptions for trade secret information and are amended by the bill to include financial information.

The bill provides for repeal of the amended exemptions on October 2, 2021, unless they are reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

This bill is tied to CS/HB 55, which clarifies the types of trade secret information that are exempt from public record disclosure. Together, the bills may have a positive fiscal impact on state and local government expenditures because they may require agencies to provide personnel training on the modified exemptions.

The bill was approved by the Governor on February 24, 2016, ch. 2016-6, L.O.F., and will become effective on October 1, 2016.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption<sup>2</sup> and must be no more broad than necessary to accomplish its purpose.<sup>3</sup>

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>4</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:<sup>5</sup>

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.

The Act also requires the automatic repeal of a public record exemption on October 2<sup>nd</sup> of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup> Specified questions must be considered by the Legislature during the review process.<sup>7</sup>

#### Trade Secrets

Florida law contains a variety of provisions making trade secret information exempt or confidential and exempt<sup>8</sup> from public record requirements. For example:

- section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is a trade secret;
- section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency;
- section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation;

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<sup>1</sup> FLA. CONST. art. I, s. 24(c).

<sup>2</sup> This portion of a public record exemption is commonly referred to as a "public necessity statement."

<sup>3</sup> FLA. CONST. art. I, s. 24(c).

<sup>4</sup> s. 119.15, F.S.

<sup>5</sup> s. 119.15(6)(b), F.S.

<sup>6</sup> s. 119.15(3), F.S.

<sup>7</sup> Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>8</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See Attorney General Opinion 85-62* (August 1, 1985).

- section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt;
- section 365.174, F.S., makes trade secret business information submitted to the E911 Board, the Technology Program within the Department of Management Services, and the Department of Revenue, confidential and exempt;
- section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt;
- sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt;
- section 499.012(8)(g) and (m), F.S., makes trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application confidential and exempt;
- section 499.0121(7), F.S., makes trade secret information reported to DBPR in a list of prescription drug wholesalers confidential and exempt;
- section 499.051(7), F.S., makes trade secret information obtained by DBPR during an investigation of a permit holder confidential and exempt;
- section 499.931, F.S., makes trade secret information submitted to DBPR for medical gas permitting purposes confidential and exempt;
- section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt;
- section 570.48(3), F.S., makes records containing trade secrets held by DACS' Division of Fruit and Vegetables confidential and exempt;
- section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons confidential and exempt;
- section 601.10(8), F.S., makes any information held by the Department of Citrus (DOC) that contains trade secrets confidential and exempt;
- section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to DOC confidential and exempt;
- section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to DOC confidential and exempt;
- section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt; and
- section 815.04(3) and (6), F.S., makes trade secret information that is held by an agency and exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

The above-described statutes define the term "trade secret" in accordance with s. 812.081(1)(c), F.S., which defines the term as follows:

"Trade secret" means 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. "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.

### **Committee Substitute for House Bill 55**

CS/HB 55, which is tied to this bill, amends the definition of “trade secret” contained in s. 812.081(1)(c), F.S., to include *financial information* that is contained or included in scientific, technical, or commercial information.

### **Effect of the Bill**

The bill, which is linked to the passage of CS/HB 55 or similar legislation, amends or reenacts all of the above-described public record exemptions to incorporate the changes to the definition of “trade secret” in s. 812.081(1)(c), F.S., made by CS/HB 55. Thus, the bill amends the public record exemptions for trade secret information to include financial information.

The bill provides for repeal of the amended exemptions on October 2, 2021, unless they are reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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

#### **2. Expenditures:**

This bill is tied to CS/HB 55, which amends an existing category of trade secret information that is exempt or confidential and exempt from public record requirements. Together, the bills may have a minimal positive impact on state government expenditures because they may require agencies to provide personnel training on the amended exemptions.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

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

#### **2. Expenditures:**

This bill is tied to CS/HB 55, which amends an existing category of trade secret information that is exempt or confidential and exempt from public record requirements. Together, the bills may have a minimal positive impact on local government expenditures because they may require local governments to provide personnel training on the expanded exemptions.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.