

1 A bill to be entitled
 2 An act relating to public records; creating s. 688.01,
 3 F.S.; providing definitions; providing an exemption
 4 from public record requirements for a trade secret
 5 held by an agency; providing notice requirements;
 6 providing a process for responding to public record
 7 requests; providing an exception to the exemption;
 8 providing that an agency employee is not liable for
 9 the release of records in compliance with the act;
 10 providing for future legislative review and repeal of
 11 the exemption; amending ss. 688.001 and 688.006, F.S.;
 12 conforming cross-references; providing a statement of
 13 public necessity; providing a contingent effective
 14 date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. Section 688.01, Florida Statutes, is created to
 19 read:

20 688.01 Trade secret exemption from inspecting or copying
 21 public records.-

22 (1) DEFINITIONS.-As used in this section, the term:

23 (a) "Agency" has the same meaning as in s. 119.011.

24 (b) "Trade secret" has the same meaning as in s. 688.002,

25 except that the term does not include:

26 1. Any contract or agreement, or an addendum thereto, to
27 which an agency is a party.

28 2. Financial information related to any contract or
29 agreement, or an addendum thereto, with an agency, including,
30 but not limited to, the amount of money paid and any payment
31 structure or plan, expenditures, incentives, fees, or penalties.

32 (2) PUBLIC RECORD EXEMPTION.—A trade secret held by an
33 agency is confidential and exempt from s. 119.07(1) and s.
34 24(a), Art. I of the State Constitution.

35 (3) NOTICE OF TRADE SECRET.—

36 (a) If a person who submits records to an agency claims
37 that such submission contains a trade secret, such person shall
38 submit to the agency a notice of trade secret when such records
39 are submitted to the agency. Failure to submit such notice
40 constitutes a waiver of any claim by such person that the record
41 contains a trade secret. The notice must provide the name,
42 telephone number, and mailing address of the person claiming the
43 record contains a trade secret. Such person is responsible for
44 updating his or her contact information with the agency.

45 (b) Each page of a record or specific portion of a record
46 that contains a trade secret must be clearly marked with the
47 words "trade secret."

48 (c) In submitting a notice of trade secret to the agency,
49 the submitting party shall verify to the agency through a
50 written declaration in the manner provided in s. 92.525 the

51 following:

52

53 [...I have/my company has...] read the definition of a
54 trade secret in s. 688.01, Florida Statutes, and [...I
55 believe/my company believes...] the information contained in
56 this record is a trade secret as defined in s. 688.01, Florida
57 Statutes.

58 [...I have/my company has...] taken measures to prevent the
59 disclosure of the record or specific portion of a record claimed
60 to be a trade secret to anyone other than those who have been
61 selected to have access for limited purposes, and [...I
62 intend/my company intends...] to continue to take such measures.

63 The record or specific portion of a record claimed to be a
64 trade secret is not, and has not been, reasonably obtainable
65 without [...my/our...] consent by other persons by use of
66 legitimate means.

67 The record or specific portion of a record claimed to be a
68 trade secret is not publicly available elsewhere.

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70 (4) RESPONSE TO A REQUEST FOR PUBLIC RECORDS.—

71 (a) If an agency receives a request for a public record
72 and the requested record or a specific portion of the record is
73 marked and verified as containing a trade secret, the agency
74 shall promptly notify the person who verified the record or
75 specific portion of the record as containing a trade secret. The

76 | notice shall be sent to the address provided to the agency and
77 | must inform such person that, in order to avoid disclosure of
78 | the trade secret, the person must file an action in circuit
79 | court within 30 days after the date of the notice seeking a
80 | declaratory judgment that the record in question contains a
81 | trade secret and an order barring public disclosure of the
82 | record.

83 | (b) The petition or other initial pleading shall be served
84 | on the agency.

85 | (c) If the identity of and contact information for the
86 | person requesting a record are available to the agency, as soon
87 | as practical after receiving a request under paragraph (a), the
88 | agency must notify such person that:

89 | 1. The record has been verified as containing a trade
90 | secret. The notification must inform the person of the process
91 | provided in paragraph (a).

92 | 2. An action has been filed.

93 | (d) The agency may not release the record pending the
94 | outcome of the legal action. Failure to file an action within 30
95 | days after the date of the notice constitutes a waiver of any
96 | claim of confidentiality, and the agency shall release the
97 | record as requested.

98 | (e) Any action under this subsection must be brought in
99 | the county in which the agency in possession of the record is
100 | headquartered.

101 (5) AGENCY ACCESS.—An agency may disclose a trade secret,
 102 together with the notice of trade secret, to an officer or
 103 employee of another agency or governmental entity whose use of
 104 the trade secret is within the scope of his or her lawful duties
 105 and responsibilities.

106 (6) LIABILITY.—An agency employee who, while acting in
 107 good faith and in the performance of his or her duties, releases
 108 a record containing a trade secret pursuant to this act is not
 109 liable, civilly or criminally, for such release.

110 (7) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
 111 to the Open Government Sunset Review Act in accordance with s.
 112 119.15 and shall stand repealed on October 2, 2023, unless
 113 reviewed and saved from repeal through reenactment by the
 114 Legislature.

115 Section 2. Section 688.001, Florida Statutes, is amended
 116 to read:

117 688.001 Short title.—Sections 688.001-688.01 ~~Sections~~
 118 ~~688.001-688.009~~ may be cited as the "Uniform Trade Secrets Act."

119 Section 3. Section 688.006, Florida Statutes, is amended
 120 to read:

121 688.006 Preservation of secrecy.—In an action under ss.
 122 688.001-688.01 ~~ss. 688.001-688.009~~, a court shall preserve the
 123 secrecy of an alleged trade secret by reasonable means, which
 124 may include granting protective orders in connection with
 125 discovery proceedings, holding in camera hearings, sealing the

126 records of the action, and ordering any person involved in the
127 litigation not to disclose an alleged trade secret without prior
128 court approval.

129 Section 4. The Legislature finds that it is a public
130 necessity that trade secrets held by an agency be made
131 confidential and exempt from s. 119.07(1), Florida Statutes, and
132 s. 24(a), Article I of the State Constitution. The Legislature
133 recognizes that in many instances, individuals and businesses
134 provide trade secret information for regulatory or other
135 purposes to an agency and that disclosure of such information to
136 competitors of those businesses would be detrimental to the
137 businesses. Without the public record exemption, those entities
138 would hesitate to cooperate with an agency, which would impair
139 the effective and efficient administration of governmental
140 functions. As such, the Legislature's intent is to protect trade
141 secret information of a confidential nature that includes a
142 formula, pattern, compilation, program, device, method,
143 technique, or process used that derives independent economic
144 value, actual or potential, from not being generally known to,
145 and not being readily ascertainable by proper means by, other
146 persons who can obtain economic value from its disclosure or
147 use. Therefore, the Legislature finds that the need to protect
148 trade secrets is sufficiently compelling to override this
149 state's public policy of open government and that the protection
150 of such information cannot be accomplished without this

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151 exemption.

152 Section 5. This act shall take effect on the same date
153 that HB 459 or similar legislation takes effect, if such
154 legislation is adopted in the same legislative session or an
155 extension thereof and becomes a law.