

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.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 688.01, Florida Statutes, is created
 19 to 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. Such
30 financial information includes the amount of money paid, any
31 payment structure or plan, expenditures, incentives, bonuses,
32 fees, and penalties.

33 (2) PUBLIC RECORD EXEMPTION.—A trade secret held by an
34 agency is confidential and exempt from s. 119.07(1) and s.
35 24(a), Art. I of the State Constitution.

36 (3) NOTICE OF TRADE SECRET.—

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

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

49 (c) In submitting a notice of trade secret to the agency,
50 the submitting party shall verify to the agency through a

51 written declaration in the manner provided in s. 92.525 the
52 following:

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

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

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

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

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

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

76 record or specific portion of the record that is marked and
77 verified as containing a trade secret. The notice must inform
78 the person who requested such record of the process outlined in
79 paragraph (b) and direct such person to respond to the notice if
80 he or she desires access to the record marked and verified as
81 containing a trade secret.

82 (b) If the person who requested the record indicates he or
83 she desires access to the requested record or a specific portion
84 of the record that has been marked and verified as containing a
85 trade secret, the agency shall promptly notify the person who
86 verified the record, or specific portion of the record, as
87 containing a trade secret of the request. The notice shall be
88 sent to the address provided to the agency and must inform such
89 person that, in order to avoid disclosure of the trade secret,
90 the person must file an action in circuit court within 30 days
91 after the date of the notice seeking a declaratory judgment that
92 the record in question contains a trade secret and an order
93 barring public disclosure of the record. If an action is filed,
94 the agency must notify the person who requested the record.

95 (c) The petition or other initial pleading shall be served
96 on the agency.

97 (d)1. When an action is filed pursuant to paragraph (b),
98 the court shall set an immediate hearing, giving the case
99 priority over other pending cases.

100 2. If the court determines that the record in question
101 does not contain a trade secret, the agency must make the record
102 available to the requester within 48 hours, unless otherwise
103 provided by the court issuing such order, or unless an appellate
104 court issues a stay order within the 48-hour period.

105 3. Upon service of a petition or other initial pleading in
106 an action brought under paragraph (b), the agency may not
107 transfer custody, alter, destroy, or otherwise dispose of the
108 record requested until the court makes a determination regarding
109 whether the record contains a trade secret.

110 (e) The agency may not release the record pending the
111 outcome of the legal action. Failure to file an action within 30
112 days after the date of the notice constitutes a waiver of any
113 claim of confidentiality, and the agency shall release the
114 record as requested.

115 (f) Any action under this subsection must be brought in
116 the county in which the agency in possession of the record is
117 headquartered.

118 (g) If the person who requested the record or specific
119 portion of the record marked and verified as containing a trade
120 secret notifies the agency that he or she no longer desires
121 access to such record, the agency shall notify the person who
122 verified the record or specific portion of the record as
123 containing a trade secret that the request has been withdrawn
124 and that obtaining a declaratory judgment is no longer

125 necessary. If the request is withdrawn before a judicial
 126 determination is made, the agency must continue to maintain the
 127 confidentiality of such record.

128 (5) AGENCY ACCESS.—An agency may disclose a trade secret,
 129 together with the notice of trade secret, to an officer or
 130 employee of another agency or governmental entity whose use of
 131 the trade secret is within the scope of his or her lawful duties
 132 and responsibilities.

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

137 (7) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
 138 to the Open Government Sunset Review Act in accordance with s.
 139 119.15 and shall stand repealed on October 2, 2023, unless
 140 reviewed and saved from repeal through reenactment by the
 141 Legislature.

142 Section 2. Section 688.001, Florida Statutes, is amended
 143 to read:

144 688.001 Short title.—Sections 688.001-688.01 ~~Sections~~
 145 ~~688.001-688.009~~ may be cited as the "Uniform Trade Secrets Act."

146 Section 3. Section 688.006, Florida Statutes, is amended
 147 to read:

148 688.006 Preservation of secrecy.—In an action under ss.
 149 688.001-688.01 ~~ss. 688.001-688.009~~, a court shall preserve the

150 secrecy of an alleged trade secret by reasonable means, which
151 may include granting protective orders in connection with
152 discovery proceedings, holding in camera hearings, sealing the
153 records of the action, and ordering any person involved in the
154 litigation not to disclose an alleged trade secret without prior
155 court approval.

156 Section 4. The Legislature finds that it is a public
157 necessity that trade secrets held by an agency be made
158 confidential and exempt from s. 119.07(1), Florida Statutes, and
159 s. 24(a), Article I of the State Constitution. The Legislature
160 recognizes that in many instances, individuals and businesses
161 provide trade secret information for regulatory or other
162 purposes to an agency and that disclosure of such information to
163 competitors of those businesses would be detrimental to the
164 businesses. Without the public record exemption, those entities
165 would hesitate to cooperate with an agency, which would impair
166 the effective and efficient administration of governmental
167 functions. As such, the Legislature's intent is to protect trade
168 secret information of a confidential nature that includes a
169 formula, pattern, compilation, program, device, method,
170 technique, or process used that derives independent economic
171 value, actual or potential, from not being generally known to,
172 and not being readily ascertainable by proper means by, other
173 persons who can obtain economic value from its disclosure or
174 use. Therefore, the Legislature finds that the need to protect

175 | trade secrets is sufficiently compelling to override this
176 | state's public policy of open government and that the protection
177 | of such information cannot be accomplished without this
178 | exemption.

179 | Section 5. This act shall take effect on the same date
180 | that HB 459 or similar legislation takes effect, if such
181 | legislation is adopted in the same legislative session or an
182 | extension thereof and becomes a law.