

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 applicability; providing for future
 11 legislative review and repeal of the exemption;
 12 amending ss. 688.001 and 688.006, F.S.; conforming
 13 cross-references; providing a statement of public
 14 necessity; providing a contingent effective 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 the following information

26 related to any contract or agreement, or an addendum thereto,
 27 with an agency:

28 1. The parties to the contract or agreement, or an
 29 addendum thereto.

30 2. The amount of money paid, any payment structure or
 31 plan, expenditures, incentives, bonuses, fees, or penalties.

32 3. The nature or type of commodities or services
 33 purchased.

34 4. Applicable contract unit prices and deliverables.

35 (2) PUBLIC RECORD EXEMPTION.—A trade secret held by an
 36 agency is confidential and exempt from s. 119.07(1) and s.
 37 24(a), Art. I of the State Constitution.

38 (3) SUBMISSION OF TRADE SECRET TO AN AGENCY.—

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

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

51 (c) In submitting a notice of trade secret to the agency,
52 the submitting party shall verify to the agency through a
53 written declaration in the manner provided in s. 92.525 the
54 following:

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

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

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

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

72
73 (4) RESPONSE TO A REQUEST FOR PUBLIC RECORDS.—

74 (a) If an agency receives a request for a public record
75 and the requested record or a specific portion of the record is

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

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

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

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

102 2. If the court determines that the record in question
103 does not contain a trade secret, the agency must make the record
104 available to the requester within 2 business days after the date
105 of the court order, unless otherwise provided by the court
106 issuing such order, or unless an appellate court issues a stay
107 order within the 2-day period.

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

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

118 (f) Any action under this subsection must be brought in
119 the county in which the agency in possession of the record is
120 headquartered.

121 (g) If the person who requested the record or specific
122 portion of the record marked and verified as containing a trade
123 secret notifies the agency that he or she no longer desires

124 access to such record, the agency shall notify the person who
125 verified the record or specific portion of the record as
126 containing a trade secret that the request has been withdrawn
127 and that obtaining a declaratory judgment is no longer
128 necessary. If the request is withdrawn before a judicial
129 determination is made, the agency must continue to maintain the
130 confidentiality of such record.

131 (h) This subsection does not apply if a declaratory
132 judgment that determines the requested information constitutes a
133 trade secret pursuant to this section has been issued within 3
134 years before the date the public record request is received by
135 the agency.

136 (5) AGENCY ACCESS.—An agency may disclose a trade secret,
137 together with the notice of trade secret, to an officer or
138 employee of another agency or governmental entity whose use of
139 the trade secret is within the scope of his or her lawful duties
140 and responsibilities.

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

145 (7) APPLICABILITY.—This section does not apply to research
146 institutes created or established in law, divisions of sponsored
147 research at state universities, or technology transfer centers
148 at Florida College System institutions.

149 (8) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
150 to the Open Government Sunset Review Act in accordance with s.
151 119.15 and shall stand repealed on October 2, 2023, unless
152 reviewed and saved from repeal through reenactment by the
153 Legislature.

154 Section 2. Section 688.001, Florida Statutes, is amended
155 to read:

156 688.001 Short title.—Sections 688.001-688.01 ~~Sections~~
157 ~~688.001-688.009~~ may be cited as the "Uniform Trade Secrets Act."

158 Section 3. Section 688.006, Florida Statutes, is amended
159 to read:

160 688.006 Preservation of secrecy.—In an action under ss.
161 688.001-688.01 ~~ss. 688.001-688.009~~, a court shall preserve the
162 secrecy of an alleged trade secret by reasonable means, which
163 may include granting protective orders in connection with
164 discovery proceedings, holding in camera hearings, sealing the
165 records of the action, and ordering any person involved in the
166 litigation not to disclose an alleged trade secret without prior
167 court approval.

168 Section 4. The Legislature finds that it is a public
169 necessity that trade secrets held by an agency be made
170 confidential and exempt from s. 119.07(1), Florida Statutes, and
171 s. 24(a), Article I of the State Constitution. The Legislature
172 recognizes that an agency may create trade secret information in
173 furtherance of the agency's duties and responsibilities and that

174 disclosure of such information would be detrimental to the
175 effective and efficient operation of the agency. If such trade
176 secret information were made available to the public, the agency
177 could suffer great economic harm. In addition, the Legislature
178 recognizes that in many instances, individuals and businesses
179 provide trade secret information for regulatory or other
180 purposes to an agency and that disclosure of such information to
181 competitors of those businesses would be detrimental to the
182 businesses. Without the public record exemption, those entities
183 would hesitate to cooperate with an agency, which would impair
184 the effective and efficient administration of governmental
185 functions. As such, the Legislature's intent is to protect trade
186 secret information of a confidential nature that includes a
187 formula, pattern, compilation, program, device, method,
188 technique, or process used that derives independent economic
189 value, actual or potential, from not being generally known to,
190 and not being readily ascertainable by proper means by, other
191 persons who can obtain economic value from its disclosure or
192 use. Therefore, the Legislature finds that the need to protect
193 trade secrets is sufficiently compelling to override this
194 state's public policy of open government and that the protection
195 of such information cannot be accomplished without this
196 exemption.

197 Section 5. This act shall take effect on the same date
198 that CS/HB 459 or similar legislation takes effect, if such

199 | legislation is adopted in the same legislative session or an
200 | extension thereof and becomes a law.