

By Senator Campbell

33-1281-00

See HB

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 287.0573, F.S.; providing an exemption from
 4 public records requirements for trade secrets
 5 received by an agency procuring commodities or
 6 services; requiring a person filing such
 7 material with the agency to file an affidavit
 8 of confidentiality and providing requirements
 9 with respect thereto; providing requirements
 10 with respect to proceedings to compel
 11 disclosure of such material; providing for
 12 recovery of attorney's fees and costs;
 13 specifying effect of a finding that the
 14 material is not trade secret information;
 15 providing for future review and repeal;
 16 providing a finding of public necessity;
 17 providing an effective date.

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

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 21 Section 1. Section 287.0573, Florida Statutes, is
 22 created to read:

23 287.0573 Trade secrets; exemption.--

24 (1) Trade secrets, as defined by s. 812.081, received
 25 by an agency procuring commodities or services are
 26 confidential and exempt from the provisions of s. 119.07(1)
 27 and s. 24(a), Art. I of the State Constitution.

28 (2) If a vendor or any other person filing material
 29 with an agency pursuant to the procurement process expects the
 30 agency to keep the material confidential on grounds that the
 31 material constitutes a trade secret, as defined by s. 812.081,

1 the vendor or other person shall file the material together
2 with an affidavit of confidentiality. "Filed material," for
3 purposes of this section, means material that is filed with an
4 agency with the expectation that the material will be kept
5 confidential and that is accompanied by an affidavit of
6 confidentiality. Filed material that is trade secret
7 information includes, but is not limited to, those items and
8 matters described in s. 815.04(3)(a).

9 (3) The affidavit that must accompany filed material
10 pursuant to subsection (2) shall contain a general claim of
11 confidentiality; describe the filed materials; identify the
12 basis upon which the claim of confidentiality is made; and
13 contain supporting argument, precedent, legal citation, or
14 other supporting documentation to enable the agency to satisfy
15 itself that the claim of confidentiality is not merely
16 specious. The agency shall have no duty to inquire into the
17 legal or technical sufficiency of a claim of confidentiality
18 that meets the minimum requirements of this subsection.

19 (4) In the event that the agency is satisfied as to
20 the facial validity of the claim of confidentiality, the
21 agency shall keep confidential the affidavit and supporting
22 documentation as well as the filed material and shall not
23 disclose such affidavit, documentation, or filed material to
24 any third party, except upon administrative order pursuant to
25 chapter 120 or upon circuit court order.

26 (5) In the event of any administrative or circuit
27 court proceeding relating to any third-party attempt to compel
28 disclosure of filed material or to challenge the
29 confidentiality thereof, the vendor or other person who filed
30 the material shall be granted leave to appear as amicus curiae
31 before the administrative law judge or the court. The

1 prevailing party in any such attempt to compel disclosure
2 shall be entitled to recover his or her reasonable attorney's
3 fees and costs from the losing party.

4 (6) In the event that an administrative law judge or
5 court determines that the filed material is not trade secret
6 information, the subsequent disclosure by the agency of the
7 filed material pursuant to s. 119.07(1) shall not be construed
8 as a commission of an offense against intellectual property
9 within the meaning of s. 815.04, nor shall the prior refusal
10 of the agency to disclose the filed material subject the
11 agency to penalty or attorney's fees under chapter 119.

12 (7) This section is subject to the Open Government
13 Sunset Review Act of 1995 in accordance with s. 119.15, and
14 shall stand repealed on October 2, 2005, unless reviewed and
15 saved from repeal through reenactment by the Legislature.

16 Section 2. The Legislature finds that it is a public
17 necessity that trade secret information, as defined by section
18 812.081, Florida Statutes, be expressly made confidential and
19 exempt from the public records law because it is a felony to
20 disclose such records. Due to the legal uncertainty as to
21 whether a public employee would be protected from a felony
22 conviction if otherwise complying with chapter 119, Florida
23 Statutes, and with Section 24(a), Article I of the State
24 Constitution, it is imperative that a public records exemption
25 be created. The Legislature, in making disclosure of trade
26 secrets a crime, has clearly established the importance
27 attached to trade secret protection. Disclosing trade secrets
28 in an agency's possession would negatively impact the business
29 interests of those providing an agency such trade secrets by
30 damaging them in the marketplace, and those entities and
31 individuals disclosing such trade secrets would hesitate to

1 cooperate with that agency, which would impair the effective
2 and efficient administration of governmental functions. Thus,
3 the public and private harm in disclosing trade secrets
4 significantly outweighs any public benefit derived from
5 disclosure, and the public's ability to scrutinize and monitor
6 agency action is not diminished by nondisclosure of trade
7 secrets.

8 Section 3. This act shall take effect October 1, 2000.

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11 LEGISLATIVE SUMMARY

12 Provides an exemption from public records requirements
13 for trade secrets received by an agency procuring
14 commodities or services. Requires a person filing such
15 material with the agency to file an affidavit of
16 confidentiality and provides requirements with respect
17 thereto. Provides requirements with respect to
18 proceedings to compel disclosure of such material.
19 Provides for recovery of attorney's fees and costs.
20 Specifies effect of a finding that the material is not
21 trade secret information. Provides for future review and
22 repeal.
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