

By the Committee on Commerce and Consumer Services; and
Senator Argenziano

577-2146-05

1 A bill to be entitled

2 An act relating to public records and public

3 meetings; creating an exemption from

4 public-records requirements for trade secrets

5 held by an agency; requiring that a written

6 declaration be submitted to the agency

7 verifying that the information is a trade

8 secret; specifying requirements for such

9 declaration; providing for retroactive

10 application of the public-records exemption;

11 creating an exemption from public-meetings

12 requirements for any portion of a meeting at

13 which a trade secret is discussed; providing

14 for future review and repeal under the Open

15 Government Sunset Review Act; providing a

16 statement of public necessity; repealing s.

17 815.045, F.S., relating to trade secret

18 information; providing an effective date.

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

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22 Section 1. (1) A trade secret, as defined in section

23 688.002 or section 812.081, Florida Statutes, held by an

24 agency as defined in section 119.011, Florida Statutes, is

25 confidential and exempt from section 119.07(1), Florida

26 Statutes, and Section 24(a), Article I of the State

27 Constitution if:

28 (a) The proprietor of the trade secret, or the

29 authorized officer, employee, or agent of the proprietor,

30 submits to the agency a written declaration, verified as

31 provided in section 92.525, Florida Statutes, which:

- 1 1. Identifies the trade secret;
2 2. Certifies that the identified information is a
3 trade secret as defined in section 688.002 or section 812.081,
4 Florida Statutes;
5 3. Certifies that the identified information derives
6 independent economic value, actual or potential, from not
7 being generally known to, and not being readily ascertainable
8 by proper means by, other persons who can obtain economic
9 value from its disclosure or use;
10 4. Certifies that the identified information is the
11 subject of efforts of the proprietor to maintain its secrecy;
12 and
13 5. Certifies that the identified information is not
14 otherwise readily ascertainable or publicly available from any
15 other source;
16 (b) The identified information is not readily
17 ascertainable or publicly available by proper means by other
18 persons from any other source; and
19 (c) The identified information is not a price or cost
20 that is included in a response to a competitive solicitation
21 submitted to an agency.
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23 This exemption applies to all trade secrets held by an agency
24 before, on, or after October 1, 2005, if the requirements of
25 this subsection are met.
26 (2) That portion of a meeting at which a trade secret
27 that is confidential and exempt pursuant to subsection (1) is
28 reviewed or discussed is exempt from section 286.011, Florida
29 Statutes, and Section 24(b), Article I of the State
30 Constitution.
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1 (3) This section is subject to the Open Government
2 Sunset Review Act of 1995 in accordance with section 119.15,
3 Florida Statutes, and shall stand repealed on October 2, 2010,
4 unless reviewed and saved from repeal through reenactment by
5 the Legislature.

6 Section 2. The Legislature finds that it is a public
7 necessity that a trade secret, as defined in section 688.002
8 or section 812.081, Florida Statutes, held by an agency as
9 defined in section 119.011, Florida Statutes, be made
10 confidential and exempt from public-records requirements. A
11 trade secret derives independent economic value, actual or
12 potential, from not being generally known to, and not being
13 readily ascertainable by proper means by, other persons who
14 can obtain economic value from its disclosure or use. An
15 agency, in performing its lawful duties and responsibilities,
16 may need to obtain from the proprietor information that is a
17 trade secret. Without an exemption from public-records
18 requirements for a trade secret held by an agency, that trade
19 secret becomes a public record when received by the agency and
20 must be divulged upon request. Divulgence of any trade secret
21 under public-records or public-meetings laws would destroy the
22 value of that property to the proprietor, causing a financial
23 loss not only to the proprietor but also to state or local
24 governments due to loss of tax revenue and employment
25 opportunities for residents. Release of that information would
26 give business competitors an unfair advantage and weaken the
27 position of the proprietor of the trade secret in the
28 marketplace. In addition, without protecting information
29 concerning a trade secret during meetings at which the
30 information is discussed, competitors and other persons may
31 attend those meetings and discover the trade secret. Thus, the

1 Legislature finds that it is a public necessity that a trade
2 secret held by an agency be made exempt from public-meetings
3 requirements and confidential and exempt from public-records
4 requirements.

5 Section 3. Section 815.045, Florida Statutes, is
6 repealed.

7 Section 4. This act shall take effect October 1, 2005.

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9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
10 COMMITTEE SUBSTITUTE FOR
11 Senate Bill 1142

12 This committee substitute differs from the bill as filed in
13 that it provides that a price or cost that is included in a
14 response to a competitive solicitation that is submitted to an
15 agency is not a trade secret that is confidential and exempt
16 from disclosure. This committee substitute also provides that
17 as long as the requirements for a trade secret exemption are
18 met, the exemption is applicable to all trade secrets held by
19 an agency before, on, or after October 1, 2005.
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