By the Committees on Governmental Oversight and Productivity; Commerce and Consumer Services; and Senator Argenziano

585-2318-05

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:

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 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

1	1. Identifies the trade secret and the specific
2	location of that trade secret within the record submitted to
3	the agency;
4	2. Certifies that the identified information is a
5	trade secret as defined in section 688.002 or section 812.081,
6	Florida Statutes;
7	3. Certifies that the identified information derives
8	independent economic value, actual or potential, from not
9	being generally known to, and not being readily ascertainable
10	by proper means by, other persons who can obtain economic
11	value from its disclosure or use;
12	4. Certifies that the identified information is the
13	subject of efforts of the proprietor to maintain its secrecy;
14	<u>and</u>
15	5. Certifies that the identified information is not
16	otherwise readily ascertainable or publicly available from any
17	other source;
18	(b) The identified information is not readily
19	ascertainable or publicly available by proper means by other
20	persons from any other source; and
21	(c) The identified information is not a price, cost or
22	calculation submitted by a vendor in a response to a
23	competitive solicitation, request for quote, or other
24	procurement method.
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26	This exemption applies to all trade secrets held by an agency
27	before, on, or after October 1, 2005, if the requirements of
28	this subsection are met.
29	(2) That portion of a meeting at which a trade secret
30	that is confidential and exempt pursuant to subsection (1) is
31	reviewed or discussed is exempt from section 286.011, Florida

Statutes, and Section 24(b), Article I of the State 2 Constitution. (3) This section is subject to the Open Government 3 4 Sunset Review Act of 1995 in accordance with section 119.15, 5 Florida Statutes, and shall stand repealed on October 2, 2010, 6 unless reviewed and saved from repeal through reenactment by 7 the Legislature. Section 2. The Legislature finds that it is a public 8 necessity that a trade secret, as defined in section 688.002 9 10 or section 812.081, Florida Statutes, held by an agency as defined in section 119.011, Florida Statutes, be made 11 12 confidential and exempt from public-records requirements. A 13 trade secret derives independent economic value, actual or potential, from not being generally known to, and not being 14 readily ascertainable by proper means by, other persons who 15 can obtain economic value from its disclosure or use. An 16 agency, in performing its lawful duties and responsibilities, 18 may need to obtain from the proprietor information that is a trade secret. Without an exemption from public-records 19 requirements for a trade secret held by an agency, that trade 2.0 21 secret becomes a public record when received by the agency and must be divulged upon request. Divulgence of any trade secret 2.2 23 under public-records or public-meetings laws would destroy the value of that property to the proprietor, causing a financial 2.4 loss not only to the proprietor but also to state or local 2.5 governments due to loss of tax revenue and employment 26 2.7 opportunities for residents. Release of that information would 2.8 give business competitors an unfair advantage and weaken the position of the proprietor of the trade secret in the 29 marketplace. In addition, without protecting information 30 concerning a trade secret during meetings at which the 31

1	information is discussed, competitors and other persons may
2	attend those meetings and discover the trade secret. Thus, the
3	Legislature finds that it is a public necessity that a trade
4	secret held by an agency be made exempt from public-meetings
5	requirements and confidential and exempt from public-records
6	requirements.
7	Section 3. <u>Section 815.045</u> , Florida Statutes, is
8	repealed.
9	Section 4. This act shall take effect October 1, 2005.
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11	STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12	COMMITTEE SUBSTITUTE FOR <u>CS/SB 1142</u>
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14	Requires the proprietor to identify the location of the trade secret information in the record submitted to the agency.
15	Expands the types of competitive solicitations that are
16	excepted from the exemption.
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