

CHAMBER ACTION

1 The State Administration Council recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

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6 A bill to be entitled

7 An act relating to public records and public meetings;
8 creating an exemption from public records requirements for
9 trade secrets held by an agency; requiring that a written
10 declaration be submitted to the agency verifying that the
11 information is a trade secret; specifying requirements for
12 such declaration; providing retroactive application of the
13 public records exemption; creating an exemption from
14 public meetings requirements for any portion of a meeting
15 at which a trade secret is discussed; providing for future
16 review and repeal; providing a statement of public
17 necessity; repealing s. 815.045, F.S., relating to trade
18 secret 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 s. 688.002
23 or s. 812.081, Florida Statutes, held by an agency as defined in

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24 | s. 119.011, Florida Statutes, is confidential and exempt from s.
 25 | 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State
 26 | Constitution if:

27 | (a) The proprietor of the trade secret, or the authorized
 28 | officer, employee, or agent of the proprietor, submits to the
 29 | agency a written declaration, verified as provided in s. 92.525,
 30 | Florida Statutes, that:

31 | 1. Identifies the trade secret;

32 | 2. Certifies that the identified information is a trade
 33 | secret as defined in s. 688.002 or s. 812.081, Florida Statutes;

34 | 3. Certifies that the identified information derives
 35 | independent economic value, actual or potential, from not being
 36 | generally known to, and not being readily ascertainable by
 37 | proper means by, other persons who can obtain economic value
 38 | from its disclosure or use;

39 | 4. Certifies that the identified information is the
 40 | subject of efforts of the proprietor to maintain its secrecy;

41 | 5. Certifies that the identified information is not
 42 | otherwise readily ascertainable or publicly available from any
 43 | other source; and

44 | (b) The information is not readily ascertainable or
 45 | publicly available by proper means by other persons from any
 46 | other source; and

47 | (c) The identified information is not a price or cost
 48 | submitted by a vendor in response to a competitive solicitation,
 49 | request for quote, or other procurement method submitted to an
 50 | agency.

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52 This exemption applies to all trade secrets held by an agency
53 before, on, or after October 1, 2005, if the requirements of
54 this subsection are met.

55 (2) That portion of a meeting at which a trade secret that
56 is confidential and exempt pursuant to subsection (1) is
57 reviewed or discussed is exempt from s. 286.011, Florida
58 Statutes, and s. 24(b), Art. I of the State Constitution.

59 (3) This section is subject to the Open Government Sunset
60 Review Act of 1995 in accordance with s. 119.15, Florida
61 Statutes, and shall stand repealed on October 2, 2010, unless
62 reviewed and saved from repeal through reenactment by the
63 Legislature.

64 Section 2. The Legislature finds that it is a public
65 necessity that a trade secret, as defined in s. 688.002 or s.
66 812.081, Florida Statutes, held by an agency as defined in s.
67 119.011, Florida Statutes, be made confidential and exempt from
68 public records requirements. A trade secret derives independent
69 economic value, actual or potential, from not being generally
70 known to, and not being readily ascertainable by proper means
71 by, other persons who can obtain economic value from its
72 disclosure or use. An agency, in performing its lawful duties
73 and responsibilities, may need to obtain from the proprietor
74 information that is a trade secret. Without an exemption from
75 public records requirements for a trade secret held by an
76 agency, that trade secret becomes a public record when received
77 by the agency and must be divulged upon request. Divulgence of
78 any trade secret under public records or public meetings laws
79 would destroy the value of that property to the proprietor,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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80 causing a financial loss not only to the proprietor but also to
81 state or local governments due to loss of tax revenue and
82 employment opportunities for residents. Release of that
83 information would give business competitors an unfair advantage
84 and weaken the position of the proprietor of the trade secret in
85 the marketplace. In addition, without protecting information
86 concerning a trade secret during meetings at which the
87 information is discussed, competitors and other persons may
88 attend those meetings and discover the trade secret. Thus, the
89 Legislature finds that it is a public necessity that a trade
90 secret held by an agency be made exempt from public meetings
91 requirements and confidential and exempt from public records
92 requirements.

93 Section 3. Section 815.045, Florida Statutes, is repealed.

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