

By the Committee on Governmental Oversight and Accountability

585-02108-09

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1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing definitions; providing that
 4 proprietary confidential business information held by
 5 an agency is confidential and exempt from public-
 6 records requirements; authorizing a request to inspect
 7 or copy a record that contains proprietary
 8 confidential business information to be granted under
 9 certain circumstances; authorizing any person to
 10 petition a court for the public release of those
 11 portions of a record made confidential and exempt by
 12 the act; providing requirements for the petition and
 13 the court order; providing that the act does not
 14 supersede any other applicable public-records
 15 exemptions that existed before a certain date;
 16 providing for future legislative review and repeal of
 17 the exemption under the Open Government Sunset Review
 18 Act; providing a finding of public necessity;
 19 repealing s. 815.045, F.S., relating to trade secret
 20 information; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Paragraph (h) is added to subsection (1) of
 25 section 119.071, Florida Statutes, to read:

26 119.071 General exemptions from inspection or copying of
 27 public records.—

28 (1) AGENCY ADMINISTRATION.—

29 (h)1. As used in this paragraph, the term:

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30 a. "Proprietor" means an any self-employed individual,
31 proprietorship, corporation, partnership, limited partnership,
32 firm, enterprise, franchise, association, trust, or business
33 entity, whether fictitiously named or not, authorized to do or
34 doing business in this state, including its respective
35 authorized officer, employee, agent, or successor in interest,
36 which controls or owns the proprietary confidential business
37 information provided to an agency.

38 b. "Proprietary confidential business information" means
39 information that has been designated by the proprietor when
40 provided to an agency as information that is owned or controlled
41 by the proprietor requesting confidentiality under this section;
42 is intended to be and is treated by that proprietor as private,
43 is not readily ascertainable or publicly available from any
44 other source, and the disclosure of which would cause harm to
45 the business operations of the proprietor; has not been
46 intentionally disclosed by the proprietor unless pursuant to a
47 private agreement that provides that the information will not be
48 released to the public except as required by law or legal
49 process or pursuant to an order of a court or administrative
50 hearing officer; and is information concerning:

51 (I) Business plans;

52 (II) Internal auditing controls and reports of internal
53 auditors;

54 (III) Reports of external auditors for privately held
55 companies; or

56 (IV) Trade secrets as defined in s. 688.002.

57 2. Proprietary confidential business information held by an
58 agency is confidential and exempt from s. 119.07(1) and s.

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59 24(a), Art. I of the State Constitution. This exemption applies
60 to proprietary confidential business information held by an
61 agency before, on, or after July 1, 2009.

62 3. Notwithstanding the provisions of subparagraph 2., a
63 request to inspect or copy a record under s. 119.07(1) which
64 contains proprietary confidential business information shall be
65 granted if the proprietor of the information fails, within a
66 reasonable period of time after the request is received by the
67 agency, to verify the following conditions to that agency
68 through a written declaration in the manner provided by s.
69 92.525:

70 a. That the requested record contains proprietary
71 confidential business information and the specific location of
72 such information within the record;

73 b. If the proprietary confidential business information is
74 a trade secret, a verification that it is a trade secret as
75 defined in s. 688.002;

76 c. That the proprietary confidential business information
77 is intended to be and is treated by the proprietor as private,
78 is the subject of efforts of the proprietor to maintain its
79 privacy, and is not readily ascertainable or publicly available
80 from any other source; and

81 d. That the disclosure of the proprietary confidential
82 business information to the public would harm the business
83 operations of the proprietor.

84 4. Any person may petition a court of competent
85 jurisdiction for an order for the public release of those
86 portions of any record made confidential and exempt by
87 subparagraph 2. Any action under this subparagraph for

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88 information held by a state agency must be brought in Leon
89 County, Florida, and the petition or other initial pleading
90 shall be served on the custodial agency and, if determinable
91 upon diligent inquiry, on the proprietor of the information
92 sought to be released. In any order for the public release of a
93 record under this subparagraph, the court shall make a finding
94 that the record or portion thereof is not a trade secret as
95 defined in s. 688.002, that a compelling public interest is
96 served by the release of the record or portions thereof which
97 exceed the public necessity for maintaining the confidentiality
98 of such record, and that the release of the record will not
99 cause damage to or adversely affect the interests of the
100 proprietor of the released information, other private persons or
101 business entities, or the agency.

102 5. This paragraph does not supersede any other applicable
103 public-records exemption existing before July 1, 2009, or
104 created thereafter.

105 6. This paragraph is subject to the Open Government Sunset
106 Review Act in accordance with s. 119.15, and shall stand
107 repealed on October 2, 2014, unless reviewed and saved from
108 repeal through reenactment by the Legislature.

109 Section 2. The Legislature finds that it is a public
110 necessity that proprietary confidential business information,
111 including trade secrets, be made confidential and exempt from s.
112 24(a), Art. I of the State Constitution and s. 119.07(1),
113 Florida Statutes. Proprietary confidential business information
114 derives independent economic value, actual or potential, from
115 not being generally known to, and not being readily
116 ascertainable by proper means by, other persons who can obtain

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117 economic value from its disclosure or use. An agency, in
118 performing its lawful duties and responsibilities, may need to
119 obtain from the proprietor confidential business information.
120 Without an exemption from public-records requirements for
121 proprietary confidential business information held by an agency,
122 such information becomes a public record when received by the
123 agency and must be divulged upon request. Divulgence of any
124 proprietary confidential business information under public-
125 records laws would destroy the value of that property to the
126 proprietor, causing a financial loss not only to the proprietor
127 but also to the state or local governments due to loss of tax
128 revenue and employment opportunities for residents. Release of
129 that information would give business competitors an unfair
130 advantage and weaken the position of the proprietor of the
131 confidential business information in the marketplace. Thus, the
132 Legislature finds that it is a public necessity that proprietary
133 confidential business information held by an agency be made
134 confidential and exempt from public-records requirements.

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

136 Section 4. This act shall take effect July 1, 2009.