

**FOR CONSIDERATION By** the Committee on Governmental Oversight and Accountability

585-01177-09

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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:

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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.