

1 A bill to be entitled
 2 An act relating to public records; creating s. 332.16,
 3 F.S.; providing definitions; providing an exemption from
 4 public records requirements for proprietary confidential
 5 business information and trade secrets held by a public
 6 airport and for any proposal or counterproposal exchanged
 7 between a public airport and a nongovernmental entity
 8 relating to the sale, use, development, or lease of
 9 airport facilities; providing for expiration of the
 10 exemptions; providing for future legislative review and
 11 repeal of the exemptions under the Open Government Sunset
 12 Review Act; providing a finding of public necessity;
 13 providing an effective date.

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

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 17 Section 1. Section 332.16, Florida Statutes, is created to
 18 read:

19 332.16 Public record exemptions.-

20 (1) DEFINITIONS.-As used in this section, the term:

21 (a) "Airport facilities" means airports, buildings,
 22 structures, terminal buildings, parking garages and lots,
 23 hangars, land, warehouses, shops, hotels, other aviation
 24 facilities of any kind or nature, or any other facility of any
 25 kind or nature related to or connected with a public airport and
 26 other aviation facility that a public airport is authorized by
 27 law to construct, acquire, own, lease, or operate, together with
 28 all fixtures, equipment, and property, real or personal,

29 tangible or intangible, necessary, appurtenant, or incidental
 30 thereto.

31 (b) "Governing body" means the board or body in which the
 32 general legislative powers of a public airport is vested.

33 (c) "Proprietor" means a self-employed individual,
 34 proprietorship, corporation, partnership, limited partnership,
 35 firm, enterprise, franchise, association, trust, or business
 36 entity, whether fictitiously named or not, authorized to do or
 37 doing business in this state, including its respective
 38 authorized officer, employee, agent, or successor in interest,
 39 which controls or owns the proprietary confidential business
 40 information provided to a public airport.

41 (d) "Proprietary confidential business information" means
 42 information that is owned or controlled by the proprietor
 43 requesting confidentiality under this section; that is intended
 44 to be and is treated by the proprietor as private in that the
 45 disclosure of the information would cause harm to the business
 46 operations of the proprietor; that has not been disclosed unless
 47 disclosed pursuant to a statutory provision, an order of a court
 48 or administrative body, or a private agreement providing that
 49 the information may be released to the public; and that is
 50 information concerning:

- 51 1. Business plans.
- 52 2. Internal auditing controls and reports of internal
 53 auditors.
- 54 3. Reports of external auditors for privately held
 55 companies.
- 56 4. Client and customer lists.

57 5. Potentially patentable material.
 58 6. Business transactions; however, business transactions
 59 do not include those transactions between a proprietor and a
 60 public airport.
 61 7. Financial information of the proprietor.
 62 (e) "Public airport" has the same meaning as provided in
 63 s. 330.27 and includes areas defined in s. 332.01(3).
 64 (f) "Trade secrets" has the same meaning as in s. 688.002.
 65 (2) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—
 66 Proprietary confidential business information held by a public
 67 airport is confidential and exempt from s. 119.07(1) and s.
 68 24(a), Art. I of the State Constitution, until such information
 69 is otherwise publicly available or is no longer treated by the
 70 proprietor as proprietary confidential business information.
 71 (3) TRADE SECRETS.—Trade secrets held by a public airport
 72 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 73 I of the State Constitution.
 74 (4) SALE, USE, DEVELOPMENT, OR LEASE OF AIRPORT
 75 FACILITIES.—Any proposal or counterproposal exchanged between a
 76 public airport and a nongovernmental entity relating to the
 77 sale, use, development, or lease of airport facilities is exempt
 78 from s. 119.07(1) and s. 24(a), Art. I of the State
 79 Constitution. However, any such proposal or counterproposal
 80 shall cease to be exempt upon approval by the governing body of
 81 a public airport. If no proposal or counterproposal is submitted
 82 to the governing body for approval, such proposal or
 83 counterproposal shall cease to be exempt 90 days after the
 84 cessation of negotiations between the public airport and the

85 nongovernmental entity.

86 (5) LEGISLATIVE REVIEW.—This section is subject to the
 87 Open Government Sunset Review Act in accordance with s. 119.15,
 88 and shall stand repealed on October 2, 2016, unless reviewed and
 89 saved from repeal through reenactment by the Legislature.

90 Section 2. (1) The Legislature finds that it is a public
 91 necessity that trade secrets and proprietary confidential
 92 business information, including business plans, internal
 93 auditing controls and reports of internal auditors, reports of
 94 external auditors for privately held companies, client and
 95 customer lists, potentially patentable material, certain
 96 business transactions, and financial information of the
 97 proprietor be made confidential and exempt from s. 119.07(1),
 98 Florida Statutes, and s. 24(a), Article I of the State
 99 Constitution. Trade secrets and proprietary confidential
 100 business information derive independent economic value, actual
 101 or potential, from not being generally known to, and not being
 102 readily ascertainable by, other persons who could obtain
 103 economic value from its disclosure or use. An airport, in
 104 performing its lawful duties and responsibilities, may need to
 105 obtain from a proprietor trade secrets or proprietary
 106 confidential business information. Without an exemption from
 107 public records requirements, trade secrets and proprietary
 108 confidential business information held by an airport become a
 109 public record and must be divulged upon request. Divulging the
 110 trade secret or proprietary confidential business information
 111 would destroy the value of that property to the proprietor,
 112 causing a financial loss not only to the proprietor, but also to

113 the airport and to the state and local governments due to a loss
114 of tax revenue and employment opportunities for residents.
115 Release of that information would give business competitors an
116 unfair advantage and would injure the affected entity in the
117 marketplace. Thus, the Legislature finds that it is a public
118 necessity that trade secrets and proprietary confidential
119 business information held by a public airport be made
120 confidential and exempt from public records requirements.

121 (2) The Legislature also finds that it is a public
122 necessity that any proposal or counterproposal exchanged between
123 a nongovernmental entity and any public airport listed in s.
124 330.27, Florida Statutes, which includes areas defined in s.
125 332.01(3), Florida Statutes, relating to the sale, use, or lease
126 of land or airport facilities, be made exempt from public
127 records requirements until approved by the governing body of the
128 airport. Proposals and counterproposals submitted to an airport
129 contain sensitive and confidential business and financial
130 information. Competing entities can gain access to such
131 proposals, and, in some instances, the affected nongovernmental
132 entity has abandoned its contractual efforts with the airport,
133 to the airport's financial detriment. Confidential business and
134 financial records submitted to an airport for purposes of the
135 sale, use, or lease of land or of airport facilities contain
136 sensitive information, the release of which would give
137 competitors an unfair economic advantage. Finally, such
138 exemption is necessary in order for Florida airports to more
139 effectively and efficiently negotiate contracts for the sale,
140 use, or lease of airport facilities.

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Section 3. This act shall take effect July 1, 2011.