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CS/HB 913

2011 Legislature

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.

14  
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,

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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.

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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

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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

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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.