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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/05/2011	.	
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The Committee on Commerce and Tourism (Gaetz) recommended the following:

1 **Senate Substitute for Amendment (138788) (with title**
2 **amendment)**

3
4
5 Delete everything after the enacting clause
6 and insert:

7 Section 1. Section 332.16, Florida Statutes, is created to
8 read:

9 332.16 Public-record exemptions.—

10 (1) DEFINITIONS.—As used in this section, the term:

11 (a) "Airport facilities" means airports, buildings,
12 structures, terminal buildings, parking garages and lots,



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13 hangars, land, warehouses, shops, hotels, other aviation
14 facilities of any kind or nature, or any other facility of any
15 kind or nature related to or connected with a public airport and
16 other aviation facility that a public airport is authorized by
17 law to construct, acquire, own, lease, or operate, together with
18 all fixtures, equipment, and property, real or personal,
19 tangible or intangible, necessary, appurtenant, or incidental
20 thereto.

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

23 (c) "Proprietor" means a self-employed individual,
24 proprietorship, corporation, partnership, limited partnership,
25 firm, enterprise, franchise, association, trust, or business
26 entity, whether fictitiously named or not, authorized to do or
27 doing business in this state, including its respective
28 authorized officer, employee, agent, or successor in interest,
29 which controls or owns the proprietary confidential business
30 information provided to a public airport.

31 (d) "Proprietary confidential business information" means
32 information that is owned or controlled by the proprietor
33 requesting confidentiality under this section; that is intended
34 to be and is treated by the proprietor as private in that the
35 disclosure of the information would cause harm to the business
36 operations of the proprietor; that has not been disclosed unless
37 disclosed pursuant to a statutory provision, an order of a court
38 or administrative body, or a private agreement providing that
39 the information may be released to the public; and that is
40 information concerning:

41 1. Business plans.



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42 2. Internal auditing controls and reports of internal
43 auditors.

44 3. Reports of external auditors for privately held
45 companies.

46 4. Client and customer lists.

47 5. Potentially patentable material.

48 6. Business transactions; however, business transactions do
49 not include those transactions between a proprietor and a public
50 airport.

51 7. Financial information of the proprietor.

52 (e) "Public airport" has the same meaning as provided in s.
53 330.27 and includes areas defined in s. 332.01(3).

54 (f) "Trade secrets" has the same meaning as in s. 688.002.

55 (2) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—
56 Proprietary confidential business information held by a public
57 airport is confidential and exempt from s. 119.07(1) and s.
58 24(a), Art. I of the State Constitution, until such information
59 is otherwise publicly available or is no longer treated by the
60 proprietor as proprietary confidential business information.

61 (3) TRADE SECRETS.—Trade secrets held by a public airport
62 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
63 I of the State Constitution.

64 (4) SALE, USE, DEVELOPMENT, OR LEASE OF AIRPORT
65 FACILITIES.—Any proposal or counterproposal exchanged between a
66 public airport and a nongovernmental entity relating to the
67 sale, use, development, or lease of airport facilities is exempt
68 from s. 119.07(1) and s. 24(a), Art. I of the State
69 Constitution. However, any such proposal or counterproposal
70 shall cease to be exempt upon approval by the governing body of



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71 a public airport. If no proposal or counterproposal is submitted
72 to the governing body for approval, such proposal or
73 counterproposal shall cease to be exempt 90 days after the
74 cessation of negotiations between the public airport and the
75 nongovernmental entity.

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

80 Section 2. (1) The Legislature finds that it is a public
81 necessity that trade secrets and proprietary confidential
82 business information, including business plans, internal
83 auditing controls and reports of internal auditors, reports of
84 external auditors for privately held companies, client and
85 customer lists, potentially patentable material, certain
86 business transactions, and financial information of the
87 proprietor be made confidential and exempt from s. 119.07(1),
88 Florida Statutes, and s. 24(a), Article I of the State
89 Constitution. Trade secrets and proprietary confidential
90 business information derive independent economic value, actual
91 or potential, from not being generally known to, and not being
92 readily ascertainable by, other persons who could obtain
93 economic value from its disclosure or use. An airport, in
94 performing its lawful duties and responsibilities, may need to
95 obtain from a proprietor trade secrets or proprietary
96 confidential business information. Without an exemption from
97 public-records requirements, trade secrets and proprietary
98 confidential business information held by an airport become a
99 public record and must be divulged upon request. Divulging the



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100 trade secret or proprietary confidential business information
101 would destroy the value of that property to the proprietor,
102 causing a financial loss not only to the proprietor, but also to
103 the airport and to the state and local governments due to a loss
104 of tax revenue and employment opportunities for residents.
105 Release of that information would give business competitors an
106 unfair advantage and would injure the affected entity in the
107 marketplace. Thus, the Legislature finds that it is a public
108 necessity that trade secrets and proprietary confidential
109 business information held by a public airport be made
110 confidential and exempt from public-records requirements.

111 (2) The Legislature also finds that it is a public
112 necessity that any proposal or counterproposal exchanged between
113 a nongovernmental entity and any public airport listed in s.
114 330.27, Florida Statutes, which includes areas defined in s.
115 332.01(3), Florida Statutes, relating to the sale, use, or lease
116 of land or airport facilities, be made exempt from public-
117 records requirements until approved by the governing body of the
118 airport. Proposals and counterproposals submitted to an airport
119 contain sensitive and confidential business and financial
120 information. Competing entities can gain access to such
121 proposals, and, in some instances, the affected nongovernmental
122 entity has abandoned its contractual efforts with the airport,
123 to the airport's financial detriment. Confidential business and
124 financial records submitted to an airport for purposes of the
125 sale, use, or lease of land or of airport facilities contain
126 sensitive information, the release of which would give
127 competitors an unfair economic advantage. Finally, such
128 exemption is necessary in order for Florida airports to more



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129 effectively and efficiently negotiate contracts for the sale,
130 use, or lease of airport facilities.

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

132

133 ===== T I T L E A M E N D M E N T =====

134 And the title is amended as follows:

135 Delete everything before the enacting clause
136 and insert:

137 A bill to be entitled
138 An act relating to public records; creating s. 332.16,
139 F.S.; providing definitions; providing an exemption
140 from public-records requirements for proprietary
141 confidential business information and trade secrets
142 held by a public airport and for any proposal or
143 counterproposal exchanged between a public airport and
144 a nongovernmental entity relating to the sale, use,
145 development, or lease of airport facilities; providing
146 for expiration of the exemptions; providing for future
147 legislative review and repeal of the exemptions under
148 the Open Government Sunset Review Act; providing a
149 finding of public necessity; providing an effective
150 date.