

By the Committee on Commerce and Tourism; and Senator Latvala

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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
4 from public-records requirements for proprietary
5 confidential business information and trade secrets
6 held by a public airport and for any proposal or
7 counterproposal exchanged between a public airport and
8 a nongovernmental entity relating to the sale, use,
9 development, or lease of airport facilities; providing
10 for expiration of the exemptions; providing for future
11 legislative review and repeal of the exemptions under
12 the Open Government Sunset Review Act; providing a
13 finding of public necessity; providing an effective
14 date.

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

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

20 332.16 Public-record exemptions.-

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

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

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

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

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

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

52 1. Business plans.

53 2. Internal auditing controls and reports of internal
54 auditors.

55 3. Reports of external auditors for privately held
56 companies.

57 4. Client and customer lists.

58 5. Potentially patentable material.

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59 6. Business transactions; however, business transactions do
60 not include those transactions between a proprietor and a public
61 airport.

62 7. Financial information of the proprietor.

63 (e) "Public airport" has the same meaning as provided in s.
64 330.27 and includes areas defined in s. 332.01(3).

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

66 (2) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—
67 Proprietary confidential business information held by a public
68 airport is confidential and exempt from s. 119.07(1) and s.
69 24(a), Art. I of the State Constitution, until such information
70 is otherwise publicly available or is no longer treated by the
71 proprietor as proprietary confidential business information.

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

75 (4) SALE, USE, DEVELOPMENT, OR LEASE OF AIRPORT
76 FACILITIES.—Any proposal or counterproposal exchanged between a
77 public airport and a nongovernmental entity relating to the
78 sale, use, development, or lease of airport facilities is exempt
79 from s. 119.07(1) and s. 24(a), Art. I of the State
80 Constitution. However, any such proposal or counterproposal
81 shall cease to be exempt upon approval by the governing body of
82 a public airport. If no proposal or counterproposal is submitted
83 to the governing body for approval, such proposal or
84 counterproposal shall cease to be exempt 90 days after the
85 cessation of negotiations between the public airport and the
86 nongovernmental entity.

87 (5) LEGISLATIVE REVIEW.—This section is subject to the Open

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88 Government Sunset Review Act in accordance with s. 119.15, and
89 shall stand repealed on October 2, 2016, unless reviewed and
90 saved from repeal through reenactment by the Legislature.

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

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117 unfair advantage and would injure the affected entity in the
118 marketplace. Thus, the Legislature finds that it is a public
119 necessity that trade secrets and proprietary confidential
120 business information held by a public airport be made
121 confidential and exempt from public-records requirements.

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

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