

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 91 Trade Secrets
SPONSOR(S): Criminal Justice Subcommittee; Pilon
TIED BILLS: HB 93 **IDEN./SIM. BILLS:** SB 564

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	Cunningham
2) Justice Appropriations Subcommittee			
3) Government Operations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Florida law currently imposes criminal penalties for a variety of acts relating to the theft, unauthorized copying, and misappropriation of trade secrets. For purposes of many of these statutes, the term "trade secret" is defined in accordance with s. 812.081, F.S., to include "any scientific, technical, or commercial information" that otherwise qualifies as trade secret.

The bill expands the definition of "trade secret" to include "any scientific, technical, commercial, or *financial* information" that otherwise qualifies as trade secret.

The bill may have a negative prison bed impact on the Department of Corrections and a negative jail bed impact on local governments because it expands the definition of "trade secret," thereby expanding the application of criminal trade secret offenses.

This bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law currently prohibits a variety of acts relating to trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony¹ for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that is a trade secret that is residing or existing internal or external to a computer, computer system, computer network, or electronic device.²
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article representing a trade secret, when done with an intent to:
 - Deprive or withhold from the trade secret's owner the control of a trade secret, or
 - Appropriate a trade secret to his or her own use or to the use of another.
- Section 581.199, F.S., makes it a first degree misdemeanor³ for a designated employee, inspector, or collaborator of the division or the United States Department of Agriculture who, in an official capacity obtains under ch. 581, F.S., any information entitled to protection as a trade secret, to use such information for personal gain or to reveal it to an unauthorized person.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets;⁴ however, a small number of these statutes provide other types of protections, such as procedural safeguards and civil remedies.⁵

For purposes of the above-described statutes, the term "trade secret" is defined in accordance with s. 812.081, F.S., as:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.⁶

Effect of the Bill

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

² The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.

³ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁴ ss. 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

⁵ ss. 721.071 and 812.035, F.S.

⁶ s. 812.081(1)(c), F.S.

The bill expands the definition of "trade secret" in s. 812.081(1)(c), F.S., to include "any scientific, technical, commercial, or *finacial* information" that otherwise qualifies as a trade secret. As such, the criminal offenses described above will apply to an expanded list of trade secret information.

B. SECTION DIRECTORY:

Section 1. Amends s. 812.081, F.S., relating to trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.

Section 2. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the fiscal impact of this bill. However, as noted above, ss. 815.04 and 812.081, F.S., impose felony penalties on persons who commit certain acts relating to trade secrets. Because the bill expands the definition of "trade secret," for purposes of those sections, it may have a negative prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

As noted above, s. 581.199, F.S., makes it a first degree misdemeanor for certain persons to use trade secret information in specified ways. Because the bill expands the definition of "trade secret," for purposes of this offense, it may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Criminal Justice Subcommittee adopted an amendment and reported the bill as favorable as a committee substitute. The amendment:

- Removed language that repealed a trade secret public records exemption; and
- Removed the reenactment of a trade secret public records exemption.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.