

By Senator Rouson

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1                   A bill to be entitled  
2       An act relating to public records; amending s.  
3       119.071, F.S.; defining terms; providing that  
4       proprietary confidential business information held by  
5       an agency is confidential and exempt from public  
6       records requirements; authorizing the custodial agency  
7       to grant a request to inspect or copy a record that  
8       contains proprietary confidential business information  
9       under certain circumstances; authorizing any person to  
10      petition a court for the public release of those  
11      portions of a record made confidential and exempt by  
12      the act; providing requirements for the petition and  
13      the court order; providing that the act does not  
14      supersede any other applicable public records  
15      exemptions that existed before a certain date;  
16      providing for future legislative review and repeal of  
17      the exemption under the Open Government Sunset Review  
18      Act; providing a finding of public necessity;  
19      repealing s. 815.045, F.S., relating to trade secret  
20      information; providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24       Section 1. Paragraph (g) is added to subsection (1) of  
25      section 119.071, Florida Statutes, to read:

26       119.071 General exemptions from inspection or copying of  
27      public records.—

28       (1) AGENCY ADMINISTRATION.—

29       (g)1. As used in this paragraph, the term:

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30           a. "Proprietary confidential business information" means  
31 information that has been designated by the proprietor when  
32 provided to an agency as information that is owned or controlled  
33 by the proprietor requesting confidentiality under this section;  
34 that is intended to be, and is, treated by that proprietor as  
35 private, is not readily ascertainable or publicly available from  
36 any other source, and, if disclosed, would cause harm to the  
37 business operations of the proprietor; that has not been  
38 intentionally disclosed by the proprietor other than under a  
39 private agreement that prohibits the release of the information  
40 to the public except as required by law or legal process or  
41 pursuant to an order of a court or administrative hearing  
42 officer; and that concerns:

43           (I) Business plans;

44           (II) Internal auditing controls and reports of internal  
45 auditors;

46           (III) Reports of external auditors for privately held  
47 companies; or

48           (IV) Trade secrets as defined in s. 688.002.

49           b. "Proprietor" means any self-employed individual,  
50 proprietorship, corporation, partnership, limited partnership,  
51 firm, enterprise, franchise, association, trust, or business  
52 entity, whether fictitiously named or not, authorized to do or  
53 doing business in this state, including its respective  
54 authorized officer, employee, agent, or successor in interest,  
55 which controls or owns the proprietary confidential business  
56 information provided to an agency.

57           2. Proprietary confidential business information held by an  
58 agency is confidential and exempt from s. 119.07(1) and s.

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59 24(a), Art. I of the State Constitution. This exemption applies  
60 to proprietary confidential business information held by an  
61 agency before, on, or after July 1, 2017.

62 3. Notwithstanding subparagraph 2., if a person requests to  
63 inspect or copy a record under s. 119.07(1) which contains  
64 proprietary confidential business information, the custodial  
65 agency shall notify the proprietor of the information of the  
66 request. The request shall be granted unless, within a  
67 reasonable period of time, the proprietor verifies the following  
68 conditions to that agency through a written declaration in the  
69 manner provided by s. 92.525:

70 a. That the requested record contains proprietary  
71 confidential business information and the specific location of  
72 such information within the record;

73 b. If the proprietary confidential business information is  
74 a trade secret, a verification that it is a trade secret as  
75 defined in s. 688.002;

76 c. That the proprietary confidential business information  
77 is intended to be, and is, treated by the proprietor as private,  
78 is the subject of efforts of the proprietor to maintain its  
79 privacy, and is not readily ascertainable or publicly available  
80 from any other source; and

81 d. That the disclosure of the proprietary confidential  
82 business information to the public would harm the business  
83 operations of the proprietor.

84 4. Any person may petition a court of competent  
85 jurisdiction for an order for the public release of those  
86 portions of any record made confidential and exempt by  
87 subparagraph 2. Any action under this subparagraph for

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88 information held by a state agency must be brought in Leon  
89 County, and the petition or other initial pleading shall be  
90 served on the custodial agency and, if determinable upon  
91 diligent inquiry, on the proprietor of the information. In any  
92 order for the public release of a record under this  
93 subparagraph, the court shall make a finding that the record or  
94 portion thereof is not a trade secret as defined in s. 688.002,  
95 that a compelling public interest is served by the release of  
96 the record or portions thereof which exceed the public necessity  
97 for maintaining the confidentiality of such record or portions  
98 thereof, and that the release of the record or portion thereof  
99 will not cause damage to or adversely affect the interests of  
100 the proprietor of the released information, other private  
101 persons or business entities, or the agency.

102 5. This paragraph does not supersede any other applicable  
103 public records exemption existing before July 1, 2017, or  
104 created thereafter.

105 6. This paragraph is subject to the Open Government Sunset  
106 Review Act in accordance with s. 119.15 and shall stand repealed  
107 on October 2, 2022, unless reviewed and saved from repeal  
108 through reenactment by the Legislature.

109 Section 2. The Legislature finds that it is a public  
110 necessity that proprietary confidential business information,  
111 including trade secrets, be made confidential and exempt from s.  
112 119.07(1), Florida Statutes and s. 24(a), Art. I of the State  
113 Constitution. Proprietary confidential business information  
114 derives actual or potential independent economic value from not  
115 being generally known to, and not being readily ascertainable by  
116 proper means by, other persons who can obtain economic value

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117 from its disclosure or use. An agency, in performing its lawful  
118 duties and responsibilities, may need to obtain from the  
119 proprietor confidential business information. Without an  
120 exemption from public records requirements for proprietary  
121 confidential business information held by an agency, such  
122 information becomes a public record when received by the agency  
123 and must be divulged upon request. Divulgence of any proprietary  
124 confidential business information under public records laws  
125 would destroy the value of that property to the proprietor,  
126 causing a financial loss not only to the proprietor but also to  
127 the state or local governments due to loss of tax revenue and  
128 employment opportunities for residents. Release of that  
129 information would give business competitors an unfair advantage  
130 and weaken the position of the proprietor of the confidential  
131 business information in the marketplace. Thus, the Legislature  
132 finds that it is a public necessity that proprietary  
133 confidential business information held by an agency be made  
134 confidential and exempt from public records requirements.

135 Section 3. Section 815.045, Florida Statutes, is repealed.

136 Section 4. This act shall take effect July 1, 2017.