

By Senator Mayfield

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2018958__

1 A bill to be entitled
2 An act relating to public records; creating s. 688.01,
3 F.S.; providing definitions; providing an exemption
4 from public records requirements for a trade secret
5 held by an agency; providing notice requirements;
6 providing a process for responding to public records
7 requests; providing an exception to the exemption;
8 providing that an agency employee is not liable for
9 the release of records in compliance with the act;
10 providing for future legislative review and repeal of
11 the exemption; amending ss. 688.001 and 688.006, F.S.;
12 conforming cross-references; providing a statement of
13 public necessity; providing a contingent effective
14 date.

15
16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Section 688.01, Florida Statutes, is created to
19 read:

20 688.01 Trade secret exemption from inspecting or copying
21 public records.-

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

23 (a) "Agency" has the same meaning as in s. 119.011.

24 (b) "Trade secret" has the same meaning as in s. 688.002,
25 except that the term does not include:

26 1. Any contract or agreement, or an addendum thereto, to
27 which an agency is a party.

28 2. Financial information related to any contract or
29 agreement, or an addendum thereto, with an agency, including,

17-00950-18

2018958__

30 but not limited to, the amount of money paid and any payment
31 structure or plan, expenditures, incentives, fees, or penalties.

32 (2) PUBLIC RECORDS EXEMPTION.—A trade secret held by an
33 agency is confidential and exempt from s. 119.07(1) and s.
34 24(a), Art. I of the State Constitution.

35 (3) NOTICE OF TRADE SECRET.—

36 (a) If a person who submits records to an agency claims
37 that such submission contains a trade secret, such person must
38 submit to the agency a notice of trade secret when such records
39 are submitted to the agency. Failure to submit such notice
40 constitutes a waiver of any claim by such person that the record
41 contains a trade secret. The notice must provide the name,
42 telephone number, and mailing address of the person claiming the
43 record contains a trade secret. Such person is responsible for
44 updating his or her contact information with the agency.

45 (b) Each page of a record or specific portion of a record
46 that contains a trade secret must be clearly marked with the
47 words "trade secret."

48 (c) In submitting a notice of trade secret to the agency,
49 the submitting party shall verify to the agency through a
50 written declaration in the manner provided in s. 92.525 the
51 following:

52
53 ... (I have/my company has)... read the definition of a
54 trade secret in s. 688.01, Florida Statutes, and ... (I
55 believe/my company believes)... the information contained in
56 this record is a trade secret as defined in s. 688.01, Florida
57 Statutes.

58 ... (I have/my company has)... taken measures to prevent

17-00950-18

2018958__

59 the disclosure of the record or specific portion of a record
60 claimed to be a trade secret to anyone other than those who have
61 been selected to have access for limited purposes, and ...
62 (intend/my company intends)... to continue to take such
63 measures.

64 The record or specific portion of a record claimed to be a
65 trade secret is not, and has not been, reasonably obtainable
66 without ... (my/our)... consent by other persons by use of
67 legitimate means.

68 The record or specific portion of a record claimed to be a
69 trade secret is not publicly available elsewhere.

70

71 (4) RESPONSE TO A REQUEST FOR PUBLIC RECORDS.—

72 (a) If an agency receives a request for a public record and
73 the requested record or a specific portion of the record is
74 marked and verified as containing a trade secret, the agency
75 shall promptly notify the person who verified the record or
76 specific portion of the record as containing a trade secret. The
77 notice shall be sent to the address provided to the agency and
78 must inform such person that, in order to avoid disclosure of
79 the trade secret, the person must file an action in circuit
80 court within 30 days after the date of the notice seeking a
81 declaratory judgment that the record in question contains a
82 trade secret and an order barring public disclosure of the
83 record.

84 (b) The petition or other initial pleading shall be served
85 on the agency.

86 (c) If the identity of and contact information for the
87 person requesting a record are available to the agency, as soon

17-00950-18

2018958__

88 as practicable after receiving a request under paragraph (a),
89 the agency must notify such person that:

90 1. The record has been verified as containing a trade
91 secret. The notification must inform the person of the process
92 provided in paragraph (a).

93 2. An action has been filed.

94 (d) The agency may not release the record pending the
95 outcome of the legal action. Failure to file an action within 30
96 days after the date of the notice constitutes a waiver of any
97 claim of confidentiality, and the agency shall release the
98 record as requested.

99 (e) Any action under this subsection must be brought in the
100 county in which the agency in possession of the record is
101 headquartered.

102 (5) AGENCY ACCESS.—An agency may disclose a trade secret,
103 together with the notice of trade secret, to an officer or
104 employee of another agency or governmental entity whose use of
105 the trade secret is within the scope of his or her lawful duties
106 and responsibilities.

107 (6) LIABILITY.—An agency employee who, while acting in good
108 faith and in the performance of his or her duties, releases a
109 record containing a trade secret pursuant to this act is not
110 liable, civilly or criminally, for such release.

111 (7) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
112 to the Open Government Sunset Review Act in accordance with s.
113 119.15 and shall stand repealed on October 2, 2023, unless
114 reviewed and saved from repeal through reenactment by the
115 Legislature.

116 Section 2. Section 688.001, Florida Statutes, is amended to

17-00950-18

2018958__

117 read:

118 688.001 Short title.—Sections 688.001-688.01 ~~Sections~~
119 ~~688.001-688.009~~ may be cited as the "Uniform Trade Secrets Act."

120 Section 3. Section 688.006, Florida Statutes, is amended to
121 read:

122 688.006 Preservation of secrecy.—In an action under ss.
123 688.001-688.01 ~~ss. 688.001-688.009~~, a court shall preserve the
124 secrecy of an alleged trade secret by reasonable means, which
125 may include granting protective orders in connection with
126 discovery proceedings, holding in camera hearings, sealing the
127 records of the action, and ordering any person involved in the
128 litigation not to disclose an alleged trade secret without prior
129 court approval.

130 Section 4. The Legislature finds that it is a public
131 necessity that trade secrets held by an agency be made
132 confidential and exempt from s. 119.07(1), Florida Statutes, and
133 s. 24(a), Article I of the State Constitution. The Legislature
134 recognizes that, in many instances, individuals and businesses
135 provide trade secret information for regulatory or other
136 purposes to an agency and that disclosure of such information to
137 competitors of those businesses would be detrimental to the
138 businesses. Without the public records exemption, those entities
139 would hesitate to cooperate with an agency, which would impair
140 the effective and efficient administration of governmental
141 functions. As such, the Legislature's intent is to protect trade
142 secret information of a confidential nature that includes a
143 formula, pattern, compilation, program, device, method,
144 technique, or process used that derives independent economic
145 value, actual or potential, from not being generally known to,

17-00950-18

2018958__

146 and not being readily ascertainable by proper means by, other
147 persons who can obtain economic value from its disclosure or
148 use. Therefore, the Legislature finds that the need to protect
149 trade secrets is sufficiently compelling to override this
150 state's public policy of open government and that the protection
151 of such information cannot be accomplished without this
152 exemption.

153 Section 5. This act shall take effect on the same date that
154 SB ___ or similar legislation takes effect, if such legislation
155 is adopted in the same legislative session or an extension
156 thereof and becomes a law.