

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 record requirements for a trade secret
 5 held by an agency; providing notice requirements;
 6 providing an exception to the exemption; providing
 7 that an agency employee is not liable for the release
 8 of records in compliance with the act; providing
 9 applicability; providing for future legislative review
 10 and repeal of the exemption; amending ss. 688.001 and
 11 688.006, F.S.; conforming cross-references; providing
 12 a statement of public necessity; providing a
 13 contingent effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 688.01, Florida Statutes, is created to
 18 read:

19 688.01 Trade secret exemption from inspecting or copying
 20 public records.-

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

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

23 (b) "Trade secret" has the same meaning as in s. 688.002,
 24 except that the term does not include the following information
 25 related to any contract or agreement, or an addendum thereto,

26 | with an agency:

27 | 1. The parties to the contract or agreement, or an
 28 | addendum thereto.

29 | 2. The amount of money paid, any payment structure or
 30 | plan, expenditures, incentives, bonuses, fees, or penalties.

31 | 3. The nature or type of commodities or services
 32 | purchased.

33 | 4. Applicable contract unit prices and deliverables.

34 | (2) PUBLIC RECORD EXEMPTION.—A trade secret held by an
 35 | agency is confidential and exempt from s. 119.07(1) and s.
 36 | 24(a), Art. I of the State Constitution.

37 | (3) SUBMISSION OF TRADE SECRET TO AN AGENCY.—

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

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

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

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

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

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

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

71
72 (4) AGENCY ACCESS.—An agency may disclose a trade secret,
73 together with the notice of trade secret, to an officer or
74 employee of another agency or governmental entity whose use of

75 the trade secret is within the scope of his or her lawful duties
 76 and responsibilities.

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

81 (6) APPLICABILITY.—This section does not apply to research
 82 institutes created or established in law, divisions of sponsored
 83 research at state universities, or technology transfer centers
 84 at Florida College System institutions.

85 (7) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
 86 to the Open Government Sunset Review Act in accordance with s.
 87 119.15 and shall stand repealed on October 2, 2024, unless
 88 reviewed and saved from repeal through reenactment by the
 89 Legislature.

90 Section 2. Section 688.001, Florida Statutes, is amended
 91 to read:

92 688.001 Short title.—Sections 688.001-688.01 ~~Sections~~
 93 ~~688.001-688.009~~ may be cited as the "Uniform Trade Secrets Act."

94 Section 3. Section 688.006, Florida Statutes, is amended
 95 to read:

96 688.006 Preservation of secrecy.—In an action under ss.
 97 688.001-688.01 ~~ss. 688.001-688.009~~, a court shall preserve the
 98 secrecy of an alleged trade secret by reasonable means, which
 99 may include granting protective orders in connection with

100 discovery proceedings, holding in camera hearings, sealing the
101 records of the action, and ordering any person involved in the
102 litigation not to disclose an alleged trade secret without prior
103 court approval.

104 Section 4. The Legislature finds that it is a public
105 necessity that trade secrets held by an agency be made
106 confidential and exempt from s. 119.07(1), Florida Statutes, and
107 s. 24(a), Article I of the State Constitution. The Legislature
108 recognizes that an agency may create trade secret information in
109 furtherance of the agency's duties and responsibilities and that
110 disclosure of such information would be detrimental to the
111 effective and efficient operation of the agency. If such trade
112 secret information were made available to the public, the agency
113 could suffer great economic harm. In addition, the Legislature
114 recognizes that in many instances, individuals and businesses
115 provide trade secret information for regulatory or other
116 purposes to an agency and that disclosure of such information to
117 competitors of those businesses would be detrimental to the
118 businesses. Without the public record exemption, those entities
119 would hesitate to cooperate with an agency, which would impair
120 the effective and efficient administration of governmental
121 functions. As such, the Legislature's intent is to protect trade
122 secret information of a confidential nature that includes a
123 formula, pattern, compilation, program, device, method,
124 technique, or process used that derives independent economic

125 value, actual or potential, from not being generally known to,
126 and not being readily ascertainable by proper means by, other
127 persons who can obtain economic value from its disclosure or
128 use. Therefore, the Legislature finds that the need to protect
129 trade secrets is sufficiently compelling to override this
130 state's public policy of open government and that the protection
131 of such information cannot be accomplished without this
132 exemption.

133 Section 5. This act shall take effect on the same date
134 that HB 759 or similar legislation takes effect, if such
135 legislation is adopted in the same legislative session or an
136 extension thereof and becomes a law.