

By Senator Baxley

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20201532__

1 A bill to be entitled
 2 An act relating to public records; creating s. 688.01,
 3 F.S.; defining terms; providing an exemption from
 4 public record requirements for a trade secret held by
 5 an agency; providing notice requirements; providing an
 6 exception to the exemption; providing liability;
 7 providing applicability; providing for future
 8 legislative review and repeal of the exemption;
 9 amending ss. 688.001 and 688.006, F.S.; conforming
 10 cross-references; providing a statement of public
 11 necessity; providing a contingent effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 688.01, Florida Statutes, is created to
 16 read:

17 688.01 Trade secret exemption from inspecting or copying
 18 public records.—

19 (1) DEFINITIONS.—As used in this section, the term:

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

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

25 1. The parties to the contract or agreement, or an addendum
 26 thereto.

27 2. The amount of money paid, any payment structure or plan,
 28 or any expenditures, incentives, bonuses, fees, or penalties.

29 3. The nature or type of commodities or services purchased.

12-01380-20

20201532__

30 4. Applicable contract unit prices and deliverables.

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

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

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

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

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

51
52 ...I have/my company has... read the definition of a trade
53 secret in s. 688.01, Florida Statutes, and ...I believe/my
54 company believes... the information contained in this record is
55 a trade secret as defined in s. 688.01, Florida Statutes.

56 ...I have/my company has... taken measures to prevent the
57 disclosure of the record or a specific portion of a record
58 claimed to be a trade secret to anyone other than those who have

12-01380-20

20201532__

59 been selected to have access for limited purposes, and ...I
60 intend/my company intends... to continue to take such measures.

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

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

67
68 (4) AGENCY ACCESS.—An agency may disclose a trade secret,
69 together with the notice of trade secret, to an officer or
70 employee of another agency or governmental entity whose use of
71 the trade secret is within the scope of his or her lawful duties
72 and responsibilities.

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

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

81 (7) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
82 to the Open Government Sunset Review Act in accordance with s.
83 119.15 and shall stand repealed on October 2, 2025, unless
84 reviewed and saved from repeal through reenactment by the
85 Legislature.

86 Section 2. Section 688.001, Florida Statutes, is amended to
87 read:

12-01380-20

20201532__

88 688.001 Short title.—Sections 688.001-688.01 ~~Sections~~
89 ~~688.001-688.009~~ may be cited as the "Uniform Trade Secrets Act."
90 Section 3. Section 688.006, Florida Statutes, is amended to
91 read:

92 688.006 Preservation of secrecy.—In an action under ss.
93 688.001-688.01 ~~ss. 688.001-688.009~~, a court shall preserve the
94 secrecy of an alleged trade secret by reasonable means, which
95 may include granting protective orders in connection with
96 discovery proceedings, holding in camera hearings, sealing the
97 records of the action, and ordering any person involved in the
98 litigation not to disclose an alleged trade secret without prior
99 court approval.

100 Section 4. The Legislature finds that it is a public
101 necessity that trade secrets held by an agency be made
102 confidential and exempt from s. 119.07(1), Florida Statutes, and
103 s. 24(a), Article I of the State Constitution. The Legislature
104 recognizes that an agency may create trade secret information in
105 furtherance of the agency's duties and responsibilities and that
106 disclosure of such information would be detrimental to the
107 effective and efficient operation of the agency. If such trade
108 secret information were made available to the public, the agency
109 could suffer great economic harm. In addition, the Legislature
110 recognizes that in many instances, individuals and businesses
111 provide trade secret information for regulatory or other
112 purposes to an agency and that disclosure of such information to
113 competitors of those businesses would be detrimental to the
114 businesses. Without the public record exemption, those entities
115 would hesitate to cooperate with an agency, which would impair
116 the effective and efficient administration of governmental

12-01380-20

20201532__

117 functions. As such, the Legislature's intent is to protect trade
118 secret information of a confidential nature that includes a
119 formula, pattern, compilation, program, device, method,
120 technique, or process used that derives independent economic
121 value, actual or potential, from not being generally known to,
122 and not being readily ascertainable by proper means by, other
123 persons who can obtain economic value from its disclosure or
124 use. Therefore, the Legislature finds that the need to protect
125 trade secrets is sufficiently compelling to override this
126 state's public policy of open government and that the protection
127 of such information cannot be accomplished without this
128 exemption.

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