

By Senator Boyd

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

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

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

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

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

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

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

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

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

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

31 4. Applicable contract unit prices and deliverables.

32 (2) PUBLIC RECORD 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) SUBMISSION OF TRADE SECRET TO AN AGENCY.—

36 (a) If a person who submits records to an agency claims
37 that such submission contains a trade secret, such person shall
38 submit to the agency a notice of trade secret at the time he or
39 she submits such records to the agency. Failure to do so
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) When submitting a notice of trade secret to the agency,
49 the submitting party must verify to the agency through a written
50 declaration in the manner provided in s. 92.525 the following:

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

57 [...I have/my company has...] taken measures to prevent the
58 disclosure of the record or specific portion of the record

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59 claimed to be a trade secret to anyone other than those who have
60 been selected to have access for limited purposes, and [...I
61 intend/my company intends...] to continue to take such measures.

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

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

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

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

78 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
79 to the Open Government Sunset Review Act in accordance with s.
80 119.15 and shall stand repealed on October 2, 2026, unless
81 reviewed and saved from repeal through reenactment by the
82 Legislature.

83 Section 2. Section 688.001, Florida Statutes, is amended to
84 read:

85 688.001 Short title.—Sections 688.001-688.01 ~~Sections~~
86 ~~688.001-688.009~~ may be cited as the "Uniform Trade Secrets Act."

87 Section 3. Section 688.006, Florida Statutes, is amended to

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88 read:

89 688.006 Preservation of secrecy.—In an action under ss.
90 688.001-688.01 ~~ss. 688.001-688.009~~, a court shall preserve the
91 secrecy of an alleged trade secret by reasonable means, which
92 may include granting protective orders in connection with
93 discovery proceedings, holding in camera hearings, sealing the
94 records of the action, and ordering any person involved in the
95 litigation not to disclose an alleged trade secret without prior
96 court approval.

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

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

126 Section 5. This act shall take effect upon becoming a law.