

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7026

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Trade Secret Held by an Agency

DATE: February 2, 2026 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	McVaney		<u>GO Submitted as Comm. Bill/Fav</u>
	White	Kruse	RC	<u>Favorable</u>

I. Summary:

SB 7026 saves from repeal the current public records exemption in s. 119.0715, F.S. for trade secrets held by an agency, which are confidential and exempt from disclosure. The bill additionally deletes duplicative public records exemptions for trade secrets codified outside of Chapter 119, F.S.

The exemption is subject to the Open Government Sunset Review Act, which requires the Legislature to review each public record exemption five years after enactment. Unless this exemption is saved from repeal by the Legislature, it will repeal on October 2, 2026. This bill removes the scheduled repeal to maintain the confidential and exempt status of the information.

The bill is not expected to impact state and local revenue and expenditures.

The bill takes effect upon becoming law.

II. Present Situation:

Access to Public Records - Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*; see *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

[a]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A bill enacting an exemption may

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2 (2022-2024).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid & Assoc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189

not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

General exemptions from the public records requirements are contained in the Public Records Act.¹³ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹⁴

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹⁵ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁶ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁷

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁸ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁹ public records or open meetings exemptions, with specified exceptions.²⁰ The Act requires the repeal of such exemption on October 2 of the fifth year after its creation or substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.²¹ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.²² If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²³

(Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST. art. I, s. 24(c).

¹³ See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹⁴ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁵ *WFTV, Inc. v. Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁶ *Id.*

¹⁷ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁸ Section 119.15, F.S.

¹⁹ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

²⁰ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²¹ Section 119.15(3), F.S.

²² See generally s. 119.15, F.S.

²³ Section 119.15(7), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁴ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption, and it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²⁵
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁶ or
- It protects trade or business secrets.²⁷

The Act also requires specified questions to be considered during the review process.²⁸ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

Public Records Exemptions for Trade Secrets

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt²⁹ from public record disclosure requirements.³⁰ Other laws further exempt proprietary business information, which the law defines to include trade secrets. "Neither the desire for nor the expectation of non-disclosure is determinative," in whether a record is exempt from public disclosure requirements.³¹ A majority of public records exemptions for trade

²⁴ Section 119.15(6)(b), F.S.

²⁵ Section 119.15(6)(b)1., F.S.

²⁶ Section 119.15(6)(b)2., F.S.

²⁷ Section 119.15(6)(b)3., F.S.

²⁸ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See Attorney General Opinion 85-62* (August 1, 1985).

³⁰ *See, e.g.*, s. 215.4401, F.S. (exempts trade secret data held by the State Board of Administration); s. 288.075(3), F.S. (exempts trade secret information held by an economic development agency); s. 517.2015, F.S.(1)(b), F.S. (exempts trade secret information obtained by the Office of Financial Regulation during an examination or investigation of securities dealers and related entities under ch. 517, F.S.).

³¹ *Sepro Corp. v. Florida Dept. of Envtl. Prot.*, 839 So. 2d 781, 784 (Fla. 1st DCA 2003)

secrets, including s. 119.0715, F.S., rely on the definition of trade secrets found in the Uniform Trade Secrets Act, ss. 688.001-688.009, F.S.

Under the Uniform Trade Secrets Act, a trade secret is information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.³²

A trade secret is not inherently exempt from public copying and inspection laws because exemption is not determined by “the desire for nor the expectation of non-disclosure.”³³ Rather, following *Sepro Corp. v. Florida Dept. of Envtl. Prot.*, 839 So. 2d 781 (Fla. 1st DCA 2003), Florida law requires a trade secret owner to identify potential trade secrets *prior* to providing the trade secrets to a public entity in order for a public records exemption to apply.³⁴ Under *Sepro*, failure to indicate the trade secret status of information before providing it to a government agency invalidates any potential claim of exemption from public records disclosure on the basis of the information’s status as a trade secret. Conversely, labeling information as a trade secret does not alone make the information confidential and exempt from public records disclosure requirements—the information must also be an actual trade secret.

Trade Secrets Held by an Agency

In 2021, the Legislature created the public records exemption for trade secrets held by an agency in s. 119.0715, F.S.³⁵ The public necessity statement, as required by the State Constitution, specified that the exemption serves a public necessity to protect trade secrets created or held by an agency and the disclosure of such information “would be detrimental to the effective and efficient operation of the agency,” and could pose “great economic harm” to the agency. Moreover, those individuals and entities who submit trade secrets to agencies for “regulatory or other purposes”—such as in the competitive procurement processes—could suffer detrimental harm if such information were disclosed to the business’ competitors and could discourage entities from cooperating with government agencies.

Section 119.0715, F.S., incorporates the definition of a trade secret codified in s. 688.002, F.S., and makes any such trade secret, when held by an agency, confidential and exempt from s. 119.07(1) and article I, section 24(a) of the State Constitution. An agency may release the trade secret to another agency or governmental entity within the scope of their lawful duties and responsibilities.

An agency, in this instance, means:

any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the

³² Section 688.002(4), F.S.

³³ *Sepro Corp. v. Florida Dept. of Envtl. Prot.*, 839 So. 2d 781, 784 (Fla. 1st DCA 2003).

³⁴ *Id.* at 783.

³⁵ HB 1055 (2021 Reg. Session).

purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The term agency includes any private persons or entities acting on behalf of an agency.³⁶ A majority of instances where a private body becomes an “agency” for public records purposes happen where (1) an agency delegated statutory authorized function; and (2) “when an agency contracts with a private entity for the provision of certain goods or services to facilitate the public agency’s performance of its duties.”³⁷ In the second instance, there must be a “significant level of involvement by the public agency,” and the contracted services cannot “merely [be] professional services to the agency.”³⁸

Proprietary Business Information

Various laws exempt from public records inspection and copying requirements proprietary business information, which is frequently defined to include trade secrets “as defined in s. 688.002, F.S.”³⁹

The definition of proprietary business information changes between different statutes exempting the information from public records disclosure requirements. Generally, however, proprietary business information includes information that:

- Is owned or controlled by the alleged trade secret holder;
- Is treated as private by the trade secret owner, who intends for it to remain private;
- Would harm the trade secret holder if disclosed;
- Is not publicly disclosed; and
- Concerns some internal business, competitive interest, or financial information of a business or enterprise of the trade secret holder.

This information may include information, the disclosure of which would impair the competitive advantage of the business that is the subject of the information.⁴⁰

Proprietary business information, while defined similarly to trade secrets, encompasses more than just trade secrets. Under the Uniform Trade Secrets Act, trade secrets are limited to formulas, patterns, compilations, programs, devices, methods, techniques, and processes; whereas proprietary business information may take any form. For instance, the definition of trade secrets used in the Florida Criminal Code includes compilation of information, which the

³⁶ *Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739, 741 (Fla. 1st DCA 2021) (“[A]n ‘agency’ subject to the public records requirements of chapter 119 includes private entities “acting on behalf of any public agency.”). See also *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018).

³⁷ *Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739, 741 (Fla. 1st DCA 2021) (internal alterations, quotations, and citation omitted).

³⁸ *Id.* at 741-42. In the second instance, in determining whether the contracted relationship rises to the level of making the private entity an agency for public records purposes, courts rely on the factors set forth in *News & Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Grp., Inc.*, 596 So. 2d 1029 (Fla. 1992).

³⁹ See ss. 73.0155, 287.137, 501.2041, 624.4212, 626.84195, and 627.3518, F.S.

⁴⁰ See ss. 73.0155, 287.137, 501.2041, 624.4212, 626.84195, and 627.3518, F.S.

definition codified in the Uniform Trade Secret Act does not.⁴¹ Under the Insurance Code proprietary business information is defined, for the purposes of exemption from public records disclosure requirements, to include the source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.⁴² Proprietary business information may also include internal and external audits, and certain financial information such as revenue data, loss expense data, gross receipts, taxes paid, capital investment, and employee wages.⁴³

Professional Staff's Open Government Sunset Review of the Public Records Exemption

The staff of the Senate Governmental Oversight and Accountability Committee and the House Government Operations Subcommittee surveyed multiple agencies, local governments, and public hospitals, and universities to ascertain whether the public records exemption in s. 119.0715, F.S., remains necessary. Staff reviewed these responses and a majority of those agencies recommended that the Legislature reenact the public records exemption without any changes.

III. Effect of Proposed Changes:

The bill maintains the confidential and exempt status of trade secrets held by an agency by deleting the scheduled October 2, 2026, repeal date in s. 119.0715, F.S., and deletes duplicative exemptions from public records inspection and copying requirements for trade secrets codified elsewhere in the Florida Statutes.

Section 1 amends s. 119.0715, F.S., to remove the scheduled repeal date for the public record exemption relating to trade secrets, as defined in s. 688.002, F.S., held by an agency.

Sections 2-18 amend various other sections of law that exempt from public records inspection and copying requirements trade secret information held by a specific agency. These affected sections are duplicative of the public records exemption codified in s. 119.0715, F.S., which is saved from repeal by this bill.

Sections 2 amends s. 287.137, F.S., to delete the reference to a trade secret within the definition of “proprietary business information.” Under s. 287.137, F.S., trade secrets obtained by the Attorney General in investigations relating to the antitrust violator vendor list are protected from public records disclosures. Any trade secret held pursuant to s. 287.137, F.S., is also protected from disclosure by s. 119.0715(5), F.S., which is saved from repeal by the bill.

Section 3 amends s. 288.075, F.S., to delete the public records exemption for trade secrets held by an economic development agency. Economic development agency means:

- The Department of Commerce;
- Any industrial development authority created in accordance with part III of chapter 159 or by special law;

⁴¹ See s. 812.081, F.S., for the definition of trade secret in the Florida Criminal Code.

⁴² Section 624.4212, F.S.

⁴³ See ss. 624.4212 and 626.84195, F.S.

- Space Florida created in part II of chapter 331;
- The public economic development agency of a county or municipality or, if the county or municipality does not have a public economic development agency, the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the responsibilities related thereto;
- Any research and development authority created in accordance with part V of chapter 159; or
- Any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county.

Under this exemption, if a private corporation, partnership, or person requests in writing (before an economic incentive agreement is signed) that an economic development agency maintain the confidentiality of information concerning plans, intentions, or interests of such private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state, the information is confidential and exempt for 12 months or until the information is otherwise disclosed, whichever comes first.

Economic development agencies are agencies under the Public Records Act and, therefore, any trade secrets held by them are also protected from disclosure under s. 119.0715, F.S. The protection for trade secrets in s. 288.075, F.S., is therefore duplicative.

Section 4 amends s. 334.049, F.S., to delete the public records exemption for trade secrets “revealing a method of process, production, or manufacture” obtained by the Department of Transportation as “as a result of research and development projects.” The exemption in s. 334.049, F.S., was expanded by s. 119.0715, F.S., which protects all trade secrets held by an agency. The Department of Transportation, as a state department created and established by law, is an agency. The records protected in the deleted portion of s. 334.049, F.S., are, therefore, also protected by s. 119.0715, F.S. The portion of s. 334.049, F.S., deleted by the bill is thus unnecessarily duplicative of s. 119.0715, F.S., which is saved by the bill.

Sections 5 amends s. 408.185, F.S., to delete the public records exemption for a trade secret obtained by the Attorney General⁴⁴ from a member of the health care community pursuant to the request for an antitrust no-action letter. This exemption applies for one year after the date of submission of such antitrust no-action letter. However, the public record exemption currently provided for a trade secret under s. 119.0715(5), F.S., protects a trade secret from public copying and inspection requirements for a longer duration—until the owner of the trade secret otherwise publicly releases it. Therefore, the trade secret exemption in s. 408.185, F.S., is duplicative.

Section 6 amends s. 409.91196, F.S., to delete a public records exemption for trade secrets identified and held by the Agency for Health Care Administration for use in Medicaid supplemental rebate agreement negotiations. The deleted language is duplicative of s. 119.0715, F.S., which also provides protection from disclosure for trade secrets. The bill leaves intact the public meeting exemption, in s. 409.91196(2), F.S., which protects portions of a Medicaid

⁴⁴ For the purposes of s. 408.185, F.S., the Attorney General is not exercising any constitutional powers and thus is an agency that is bound by the Public Records Act.

Pharmaceutical and Therapeutics Committee at which such trade secrets identified for use in negotiations are discussed.

Section 7 amends s. 440.108, F.S., to delete the public records exemption for Department of Financial Services' workers' compensation investigative records that may reveal trade secrets. Under s. 440.108, F.S., all investigatory records and any other records necessary to complete an investigation held by the department are confidential and exempt during an active investigation. The confidential and exempt status continues after an investigation for certain enumerated information, including trade secrets. The department is an agency under the Public Records Act. The deleted language only relates to trade secrets, which will continue to be confidential and exempt by the exemption in s. 119.0715, F.S. The deleted language is therefore duplicative. The remaining exemptions in s. 440.108, F.S., are not amended by the bill.

Section 8 amends s. 497.172, F.S., to delete the public records exemption for trade secrets held by the Department of Financial Services or Board of Funeral, Cemetery, and Consumer Services in the course of their development of licensure examinations, investigation of a licensee, and inspection of a facility. Both the Department of Financial Services or Board of Funeral, Cemetery, and Consumer Services, are agencies under the Public Records Act, and, therefore, any trade secrets held by them are also exempt from public records inspection and copying requirements by s. 119.0715, F.S. The deleted language, therefore, is duplicative of the exemption saved from repeal by this bill.

Sections 9-12 amend ss. 501.171, 501.1735, 501.2041, and 501.722, F.S., respectively, to delete the references to a trade secret within the public records exemptions provided for "proprietary business information" that is obtained and held by the Department of Legal Affairs during the following specific investigations:

- Section 501.171, F.S., an investigation of a breach of data security of certain entities.
- Section 501.1735, F.S., an investigation into unfair and deceptive trade practice that violates certain child protections by an online platform.
- Section 501.2041, F.S., an investigation into deceptive and unfair trade practices by social media platforms.
- Section 501.722, F.S., an investigation into deceptive and unfair trade practices regarding data privacy and security.

The Department of Legal Affairs is an agency under the Public Records Act. The bill deletes references to the protection of trade secret information that is also protected from disclosure by s. 119.0715, F.S. and leaves intact the remaining exemptions from public records requirements for proprietary business information more broadly. The deleted language, therefore, is duplicative of the exemption saved from repeal by this bill.

Section 13 amends s. 520.9965, F.S., to delete the public records exemption for trade secret information related to an investigation by the Office of Financial Regulation of the Financial Services Commission or the Department of Financial Services into certain actions prohibited in retail sales. Both the office and the department are agencies under the Public Records Act and, therefore, any trade secrets protected from public records inspection and copying requirements by s. 119.0715, F.S., apply to any trade secret held by either entity. The language deleted

language is duplicative of the exemption in s. 119.0715, F.S., which is saved from repeal by this bill.

Section 14 amends s. 548.062, F.S., to delete the references to a trade secret within the public records exemptions provided for “proprietary business information.” The exemption applies to information provided by a promotor to the Florida Athletic Commission or otherwise obtained by the same through an audit of the promoter’s books and records. The Florida Athletic Commission is a body within the Department of Business and Professional Regulation, and, therefore, an agency within the definition of agency in the Public Records Act. The deleted language only relates to trade secrets, which are also protected by the exemption codified in s. 119.0715, F.S. The deleted language is therefore duplicative. The remaining exemptions are not amended by the bill.

Section 15 amends s. 559.5558, F.S., to delete the public records exemption for trade secret information that is both (1) held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination of a violation of the Florida Consumer Collection Practices Act; and (2) would reveal a trade secret. The office is an agency for the purposes of the Public Records Act and, therefore, any trade secrets held by the office are also protected from public records disclosure by s. 119.0715, F.S. The deleted language is therefore duplicative. The remaining exemptions afforded for such investigative records are not amended by the bill.

Section 16 amends s. s. 569.215, F.S., to delete the reference to a trade secret within the public records exemptions provided for “proprietary business information.” The exemption applies to proprietary business information (including trade secrets) received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations in relation to the case of *State of Florida v. American Tobacco Company*; or received by the Chief Financial Officer or the Auditor General for any purpose relating to verification of settlement payments pursuant the case. This exemption applies if, and only if, the trade secrets are controlled by a tobacco company that is a signatory to the settlement agreement. Any trade secrets protected by s. 569.215, F.S., are also protected from public records inspection and copying requirements by s. 119.0715, F.S. The deleted language is therefore duplicative.

Section 17 amends s. 627.0628, F.S., to delete the public records exemption for trade secrets used in designing and constructing a hurricane or flood loss model for Florida Commission on Hurricane Loss Projection Methodology. The Florida Commission on Hurricane Loss Projection Methodology is housed within the State Board of Administration and is, therefore, an agency for the purposes of the Public Records Act. Trade secret information held by the Florida Commission on Hurricane Loss Projection Methodology is accordingly also protected from public records disclosure by s. 119.0715, F.S. The bill does not delete the protection for public meetings discussing the protected trade secrets. The only language deleted by the bill is duplicative of the protections in s. 119.0715, F.S.

Section 18 amends s. 1004.4472, F.S., to delete the public records exemption for trade secrets obtained by the Florida Institute for Human and Machine Cognition, Inc., in the course of research conducted by or through the corporation or a subsidiary, and business transactions resulting from such research. The Florida Institute for Human and Machine Cognition, Inc., is

created by law as a part of the University of West Florida and, therefore, an agency for the purposes of the Public Records Act. While s. 1004.1172, F.S., protects from public records disclosure more information than public records, the bill only deletes the duplicative public records exemption for trade secrets that are also exempted from public records inspection and copying requirements by s. 119.0715, F.S. The deleted language, therefore, is duplicative of the protections in s. 119.0715, F.S., saved from repeal by the bill.

Section 19 provides the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, section 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records disclosure requirements. This bill does not create or expand an exemption and thus does not require a two-thirds vote.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records disclosure requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption and thus does not require a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. This exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None identified.

B. Private Sector Impact:

None identified.

C. Government Sector Impact:

The bill is not expected to impact state and local government revenues and expenditures.

VI. Technical Deficiencies:

None identified.

VII. Related Issues:

Should the Legislature not save the exemption from repeal, it may wish to look at the following statutes which cite or identify the exemption:

- Section 499.026, F.S., which provides, but for specified information, the exemption in s. 119.0715, F.S., does not apply to a prescription drug manufacturer's trade secrets held by the Department of Business and Professional Regulation if the Department requires such information to issue the relevant permit.
- Section 624.424, F.S., which provides that information connected to the annual audits submitted by each insurer or insurer group to the Office of Insurance Regulation of the Financial Services Commission is not a trade secret nor exempted from public records inspection and copying requirements provided in s. 119.0715, F.S.
- Section 717.1301, F.S., which provides that material compiled by the Department of Financial Services in the course of an investigation under the Florida Disposition of Unclaimed Property Act may be exempt from public records disclosures as provided in s. 119.0715, F.S.

VIII. Statutes Affected:

This bill substantially amends sections 119.0715, 287.137, 288.075, 334.049, 408.185, 409.91196, 440.108, 497.172, 501.171, 501.1735, 501.2041, 501.722, 520.9965, 548.062, 559.5558, 569.215, 627.0628, and 1004.4472 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
