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# Commerce Committee

Thursday, January 30, 2020  
11:30 AM – 1:30 PM  
Webster Hall (212 Knott)

## Meeting Packet



# The Florida House of Representatives

## Commerce Committee

Jose Oliva  
Speaker

Mike La Rosa  
Chair

### Meeting Agenda

Thursday, January 30, 2020

11:30 am – 1:30 pm

Webster Hall (212 Knott)

- I. Call to Order
- II. Roll Call
- III. Welcome and Opening Remarks
- IV. Consideration of the following bill(s):
  - CS/HB 3 Preemption of Local Occupational Licensing by Business & Professions Subcommittee, Grant, M.
  - CS/HB 487 Fire Prevention and Control by Government Operations & Technology Appropriations Subcommittee, Fetterhoff
  - CS/HB 511 Insulation Products by Business & Professions Subcommittee, Fine
  - CS/HB 519 Private Property Rights Protection by Civil Justice Subcommittee, Grant, J.
  - HB 799 Pub. Rec./Trade Secrets by Gregory
  - CS/HB 801 Public Records by Oversight, Transparency & Public Management Subcommittee, Gregory
- V. Closing Remarks
- VI. Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 3 Preemption of Local Occupational Licensing  
**SPONSOR(S):** Business & Professions Subcommittee, Grant, M.  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1336

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 2 N, As CS	Wright	Anstead
2) Commerce Committee		Wright	Hamon

### SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law. Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors. Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.

General law directs a number of state agencies and licensing boards to regulate many professions and occupations. General law can also authorize or preempt local regulation of professions and occupations, which is typically done specifically and individually by subject matter, business type, or occupation.

The bill expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations. However, any licensing of occupations adopted prior to July 1, 2020, will continue to be effective until July 1, 2022, at which time it will expire. Any licensing of occupations authorized by general law is exempt from the preemption.

The bill specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman type licensed by the Construction Industry Licensing Board, within the Department of Business and Professional Regulation, and specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill also expressly authorizes counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities.

The bill does not appear to have a fiscal impact on the state, but may have an indeterminate fiscal impact on local governments.

The bill has an effective date of July 1, 2020.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>1</sup> Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.<sup>2</sup>

Likewise, municipalities<sup>3</sup> have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.<sup>4</sup>

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,<sup>5</sup> special act,<sup>6</sup> local ordinance,<sup>7</sup> or by rule of the Governor and Cabinet.<sup>8</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>9</sup>

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of the governing body of a single county or municipality.<sup>10</sup> An "independent special district" is any district that is not a dependent special district.<sup>11</sup>

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<sup>1</sup> Art. VIII, s. 1(f), Fla. Const.

<sup>2</sup> Art. VIII, s. 1(g), Fla. Const.

<sup>3</sup> A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

<sup>4</sup> Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.

<sup>5</sup> Section 189.031(3), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> S. 189.02(1), F.S.

<sup>8</sup> S. 190.005(1), F.S. *See, generally,* s. 189.012(6), F.S.

<sup>9</sup> 2018 – 2020 *Local Gov't Formation Manual*, p. 62,

<https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Dec 19, 2019).

<sup>10</sup> S. 189.012(2), F.S.

<sup>11</sup> S. 189.012(3), F.S.

## Revenue Sources Authorized in the Florida Constitution<sup>12</sup>

The Florida Constitution limits the ability of local governments to raise revenue for their operations. The Florida Constitution provides:

No tax shall be levied except in pursuance of law. No state ad valorem taxes<sup>13</sup> shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.<sup>14</sup>

Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.<sup>15</sup>

However, not all local government revenue sources are taxes requiring general law authorization. When a county or municipal revenue source is imposed by ordinance, the question is whether the charge is a valid assessment or fee. As long as the charge is not deemed a tax, the imposition of the assessment or fee by ordinance is within the constitutional and statutory home rule powers of county and municipal governments. If the charge is not a valid assessment or fee, it is deemed a revenue source requiring general law authorization.

## Revenue Sources Based on Home Rule Authority

Pursuant to home rule authority, local governments may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. A regulatory fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.<sup>16</sup>

## Preemption

State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute.<sup>17</sup> A local government enactment may be found inconsistent with state law if (1) the Legislature has preempted a particular subject area to the state or (2) the local regulation conflicts with a state statute.<sup>18</sup>

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>19</sup> Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.<sup>20</sup> When local ordinances have been enacted in the face of state preemption, the effect has been to find such ordinances null and void.<sup>21</sup>

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<sup>12</sup> The Florida Legislature, Office of Economic and Demographic Research, 2019 Local Government Financial Information Handbook, p. 1, <http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf> (Jan. 8, 2020).

<sup>13</sup> "Ad valorem tax" means a tax based upon the assessed value of property." Section 192.001(1), F.S.

<sup>14</sup> Art. VII, s. 1(a), Fla. Const.

<sup>15</sup> Art. VII, s. 9(a), Fla. Const.

<sup>16</sup> EDR, *supra* note 12, at 9.

<sup>17</sup> James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Jan 8, 2020).

<sup>18</sup> *Id.*

<sup>19</sup> See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

<sup>20</sup> *Mulligan*, 934 So. 2d at 1243.

<sup>21</sup> See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

Implied preemption is a legal doctrine created to address those situations in which the courts may have been concerned by the legislature's failure to expressly preempt areas which, for all intents and purposes, seemed dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.<sup>22</sup>

### Professions and Occupations

General law directs a number of state agencies and licensing boards to regulate certain professions and occupations. For example, the Department of Business and Professional Regulation (DBPR) currently regulates approximately 25 professions and occupations.<sup>23</sup>

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.<sup>24</sup> If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.<sup>25</sup> For example, Florida law currently preempts local regulation with regard to the following:

- assessing local fees associated with providing proof of licensure as a contractor, , or providing, recording, or filing evidence of worker's compensation insurance coverage by a contractor;<sup>26</sup>
- assessing local fees and rules regarding low-voltage alarm system projects;<sup>27</sup>
- tobacco and nicotine products;<sup>28</sup>
- firearms, weapons, and ammunition;<sup>29</sup>
- employment benefits;<sup>30</sup>
- polystyrene products;<sup>31</sup>
- public lodging establishments and public food service establishments;<sup>32</sup> and
- disposable plastic bags.<sup>33</sup>

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.<sup>34</sup> For example, Florida law specifically authorizes regulations relating to:

- zoning and land use;
- the levy of "reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter";<sup>35</sup>
- the levy of local business taxes;<sup>36</sup>
- building code inspection fees;<sup>37</sup>
- tattoo establishments;<sup>38</sup>
- massage practices;<sup>39</sup>

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<sup>22</sup> Wolf and Bolinder, *supra* note 17.

<sup>23</sup> S. 20.165, F.S.

<sup>24</sup> Art. VIII, s. 1(f), Fla. Const.; Art. VII, s. 9(a), Fla. Const.; Art. VIII, s. 2(b), Fla. Const.; s. 166.021(1), F.S.

<sup>25</sup> *Id.*; Wolf and Bolinger, *supra* note 17.

<sup>26</sup> S. 553.80(7)(d), F.S.

<sup>27</sup> S. 489.503(14), F.S.

<sup>28</sup> Ch. 569, F.S., and s. 386.209, F.S.

<sup>29</sup> S. 790.33(1), F.S.

<sup>30</sup> S. 218.077, F.S.

<sup>31</sup> S. 500.90, F.S.

<sup>32</sup> S. 509.032, F.S.

<sup>33</sup> S. 403.7033, F.S.

<sup>34</sup> *Supra* note 25.

<sup>35</sup> S. 166.221, F.S.

<sup>36</sup> Ch. 205, F.S.

<sup>37</sup> S. 166.222, F.S.

<sup>38</sup> S. 381.00791, F.S.

<sup>39</sup> S. 480.052, F.S.

- child care facilities;<sup>40</sup>
- taxis and other vehicles for hire;<sup>41</sup> and
- waste and sewage collection.<sup>42</sup>

### Construction Professional Licenses

Chapter 489, F.S., relates to “contracting,” with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.<sup>43</sup>

“Certified contractors” are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.<sup>44</sup>

“Certified specialty contractors” are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.

“Registered contractors” are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.<sup>45</sup>

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<sup>40</sup> S. 402.306, F.S.

<sup>41</sup> S. 125.01(1)(n), F.S.

<sup>42</sup> S. 125.01(1)(k), F.S.

<sup>43</sup> S. 489.107, F.S.

<sup>44</sup> S. 489.105, F.S.

<sup>45</sup> S. 489.103, F.S.

The CILB licenses the following types of contractors:<sup>46</sup>

Statutory Licenses	Specialty Licenses
<ul style="list-style-type: none"> <li>• Air Conditioning- Classes A, B, and C</li> <li>• Building</li> <li>• General</li> <li>• Internal Pollutant Storage Tank Lining Applicator</li> <li>• Mechanical</li> <li>• Plumbing</li> <li>• Pollutant Storage Systems</li> <li>• Pool/Spa- Classes A, B, and C</li> <li>• Precision Tank Tester</li> <li>• Residential</li> <li>• Roofing</li> <li>• Sheet Metal</li> <li>• Solar</li> <li>• Underground Excavation</li> </ul>	<ul style="list-style-type: none"> <li>• Drywall</li> <li>• Demolition</li> <li>• Gas Line</li> <li>• Glass and Glazing</li> <li>• Industrial Facilities</li> <li>• Irrigation</li> <li>• Marine</li> <li>• Residential Pool/Spa Servicing</li> <li>• Solar Water Heating</li> <li>• Structure</li> <li>• Swimming Pool Decking</li> <li>• Swimming Pool Excavation</li> <li>• Swimming Pool Finishes</li> <li>• Swimming Pool Layout</li> <li>• Swimming Pool Piping</li> <li>• Swimming Pool Structural</li> <li>• Swimming Pool Trim</li> <li>• Tower</li> </ul>

Current law provides that local jurisdictions may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.<sup>47</sup> Local jurisdictions are not barred from issuing and requiring construction licenses that are outside the scope of practice for a certified contractor or certified specialty contractor, such as painting and fence erection licenses. Local governments may only collect licensing fees that cover the cost of regulation.<sup>48</sup>

Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license. However, persons holding a local construction license whose job scope does not substantially correspond to the job scope of a certified contractor or a certified specialty contractor are not required to register with DBPR.<sup>49</sup>

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified or registered under the ECLB. Certified contractors can practice statewide and are licensed and regulated by ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may only practice within that locality.<sup>50</sup>

Electrical contractors are contractors who have the ability to work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.<sup>51</sup>

Alarm system contractors are contractors who are able to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems. An "alarm system" is defined as "any

<sup>46</sup> S. 489.105(a)-(q), F.S.; Rr. 61G4-15.015-040, F.A.C.

<sup>47</sup> Ss. 489.117, 489.131 F.S.

<sup>48</sup> EDR, *supra* note 12, at 9.

<sup>49</sup> Ss. 489.105, & 489.117(4), F.S.

<sup>50</sup> See generally s. 489.505, F.S.

<sup>51</sup> Ss. 489.505(12), & 489.537(7), F.S.

electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency.”<sup>52</sup>

Electrical certified specialty contractors are contractors whose scope of work is limited to a particular phase of electrical contracting, such as electrical signs. The ECLB creates electrical certified specialty contractor licenses through rulemaking. Certified electrical specialty contractors can practice statewide. The ECLB has created the following certified specialty contractor licenses:

- Lighting maintenance specialty contractor;
- Sign specialty electrical contractor;
- Residential electrical contractor;
- Limited energy systems specialty contractor; and
- Utility line electrical contractor.<sup>53</sup>

### Journeyman

A journeyman is a skilled worker in a building trade or craft. There is no state requirement for licensure as a journeyman, but the construction and electrical contractor practice acts account for the fact that counties and municipalities issue journeyman licenses. A person with a journeyman license must always work under the supervision of a licensed contractor, but the state does not regulate journeymen activities or issue journeymen licenses.<sup>54</sup>

However, ch. 489, F.S., allows tradesman to be licensed as a journeyman in one local jurisdiction and work in multiple jurisdictions without having to take another examination or pay an additional licensing fee to qualify to work in the other jurisdictions (county or municipality). Specifically, s. 489.1455(1) of part I, F.S., specifies:

- An individual who holds a valid, active journeyman license in the plumbing/pipe fitting, mechanical, or HVAC trades issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any county or municipality of this state without taking an additional examination or paying an additional license fee.

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include:<sup>55</sup>

- scoring at least 75 percent on an approved proctored examination for that construction trade;
- completing a registered apprenticeship program and demonstrating verifiable practical experience in the particular trade;
- completing coursework approved by the Florida Building Commission specific to the discipline; and
- not having a license suspended or revoked within the last 5 years.

### **Effect of the Bill**

The bill defines the following terms:

- “Local government” means a county, municipality, special district, or political subdivision of the state.
- “Occupation” means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.
- “Licensing” means any training, education, test, certification, registration, or license that is required for a person to perform an occupation along with any associated fee.

The bill expressly preempts occupational licensing to the state. This preemption supersedes any local government licensing requirement of occupations unless:

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<sup>52</sup> S. 489.505(1)-(2), F.S.

<sup>53</sup> S. 489.505(19), & 489.511(4), F.S.; Rule 61G6-7.001, F.A.C.

<sup>54</sup> Ss. 489.103, 489.1455, 489.503, & 489.5335, F.S.

<sup>55</sup> S. 489.1455, F.S. A similar reciprocity option applies to journeyman in the electrical trades. S. 489.5335, F.S.

- the licensing of occupations by local governments is authorized by general law; or
- the local licensing scheme for an occupation was imposed before July 1, 2020. However, any such local licensing scheme expires on July 1, 2022.

The bill prohibits local governments that license an occupation that qualifies for the exemption until July 1, 2022, from imposing additional licensing requirements on that occupation and from modifying such licensing.

The bill provides that any local licensing of an occupation not authorized under the provisions of the bill or otherwise authorized by general law does not apply and may not be enforced.

The bill provides that the preemption applies to licensing that is outside the scope of state contractor licensing provisions. Specifically, it provides that a county or municipality may not require a license for a person whose job scope does not substantially correspond to a contractor category licensed by the CILB. The bill specifically precludes counties and municipalities from requiring a license for certain job scopes, including, but not limited to, painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill also expressly authorizes counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities. The licensing of those specific local journeyman is exempt from the preemption in the bill.

**B. SECTION DIRECTORY:**

- Section 1      Creates s. 163.21, F.S., relating to licensing of occupations preempted to the state.
- Section 2      Amends s. 489.117, F.S., relating to registration; specialty contractors.
- Section 3      Amends s. 489.1455, F.S., relating to journeyman; reciprocity; standards.
- Section 4      Amends s. 489.5335, F.S., relating to journeyman; reciprocity; standards.
- Section 5      Provides an effective date of July 1, 2020.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

- 1. Revenues:  
None.
- 2. Expenditures:  
None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

- 1. Revenues:  
None.
- 2. Expenditures:  
None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will have an indeterminate positive impact on the private sector. Workers may have to pay less in licensing and examination fees in some local jurisdictions. There may be an increase in the number of people in the workforce practicing their chosen professions.

**D. FISCAL COMMENTS:**

The fiscal impact of the bill on local governments is indeterminate.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 15, 2020, the Business & Professions Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified the definition for "licensing."

This analysis is drafted to the committee substitute as passed by the Business & Professions subcommittee.

1                                   A bill to be entitled  
 2           An act relating to preemption of local occupational  
 3           licensing; creating s. 163.211, F.S.; providing  
 4           definitions; preempting licensing of occupations to  
 5           the state; providing exceptions; prohibiting local  
 6           governments from imposing additional licensing  
 7           requirements or modifying licensing unless specified  
 8           conditions are met; specifying that certain local  
 9           licensing that does not meet specified criteria does  
 10          not apply and may not be enforced; amending s.  
 11          489.117, F.S.; specifying that certain specialty  
 12          contractors are not required to register with the  
 13          Construction Industry Licensing Board; prohibiting  
 14          local governments from requiring certain specialty  
 15          contractors to obtain a license under specified  
 16          circumstances; specifying job scopes for which a local  
 17          government may not require a license; amending ss.  
 18          489.1455 and 489.5335, F.S.; authorizing counties and  
 19          municipalities to issue certain journeyman licenses;  
 20          providing an effective date.

21  
 22   Be It Enacted by the Legislature of the State of Florida:

23  
 24           Section 1.   Section 163.211, Florida Statutes, is created  
 25   to read:

26 163.211 Licensing of occupations preempted to state.-

27 (1) DEFINITIONS.-As used in this section:

28 (a) "Licensing" means any training, education, test,  
 29 certification, registration, or license that is required for a  
 30 person to perform an occupation in addition to any associated  
 31 fee.

32 (b) "Local government" means a county, municipality,  
 33 special district, or political subdivision of the state.

34 (c) "Occupation" means a paid job, profession, work, line  
 35 of work, trade, employment, position, post, career, field,  
 36 vocation, or craft.

37 (2) PREEMPTION OF OCCUPATIONAL LICENSING TO THE STATE.-The  
 38 licensing of occupations is expressly preempted to the state and  
 39 this section supersedes any local government licensing  
 40 requirement of occupations with the exception of the following:

41 (a) Any local government that imposed licenses on  
 42 occupations before July 1, 2020. However, any such local  
 43 government licensing of occupations expires on July 1, 2022.

44 (b) Any local government licensing of occupations  
 45 authorized by general law.

46 (3) EXISTING LICENSING LIMIT.-A local government that  
 47 licenses occupations and retains such licensing as set forth in  
 48 paragraph (2)(a) may not impose additional licensing  
 49 requirements on that occupation or modify such licensing.

50 (4) LOCAL LICENSING NOT AUTHORIZED.-Local licensing of an

51 occupation that is not authorized under this section or  
 52 otherwise authorized by general law does not apply and may not  
 53 be enforced.

54 Section 2. Paragraph (a) of subsection (4) of section  
 55 489.117, Florida Statutes, is amended to read:

56 489.117 Registration; specialty contractors.—

57 (4) (a) A person ~~holding a local license~~ whose job scope  
 58 does not substantially correspond to either the job scope of one  
 59 of the contractor categories defined in s. 489.105(3)(a)-(o), or  
 60 the job scope of one of the certified specialty contractor  
 61 categories established by board rule, is not required to  
 62 register with the board ~~to perform contracting activities within~~  
 63 ~~the scope of such specialty license.~~ A local government, as  
 64 defined in s. 163.21(1), may not require a person to obtain a  
 65 license for a job scope which does not substantially correspond  
 66 to the job scope of one of the contractor categories defined in  
 67 s. 489.105(3)(a)-(o) and (q) or authorized in s. 489.1455(1).  
 68 For purposes of this section, job scopes for which a local  
 69 government may not require a license include, but are not  
 70 limited to, painting, flooring, cabinetry, interior remodeling,  
 71 driveway or tennis court installation, decorative stone, tile,  
 72 marble, granite, or terrazzo installation, plastering,  
 73 stuccoing, caulking, canvas awning, and ornamental iron  
 74 installation.

75 Section 3. Section 489.1455, Florida Statutes, is amended

76 to read:

77 489.1455 Journeyman; reciprocity; standards.-

78 (1) Counties and municipalities are authorized to issue  
 79 journeyman licenses in the plumbing, pipe fitting, mechanical,  
 80 or HVAC trades.

81 (2)~~(1)~~ An individual who holds a valid, active journeyman  
 82 license in the plumbing, pipe fitting ~~plumbing/pipe fitting,~~  
 83 mechanical, or HVAC trades issued by any county or municipality  
 84 in this state may work as a journeyman in the trade in which he  
 85 or she is licensed in any county or municipality of this state  
 86 without taking an additional examination or paying an additional  
 87 license fee, if he or she:

88 (a) Has scored at least 70 percent, or after October 1,  
 89 1997, at least 75 percent, on a proctored journeyman Block and  
 90 Associates examination or other proctored examination approved  
 91 by the board for the trade in which he or she is licensed;

92 (b) Has completed an apprenticeship program registered  
 93 with a registration agency defined in 29 C.F.R. s. 29.2 and  
 94 demonstrates 4 years' verifiable practical experience in the  
 95 trade for which he or she is licensed, or demonstrates 6 years'  
 96 verifiable practical experience in the trade for which he or she  
 97 is licensed;

98 (c) Has satisfactorily completed specialized and advanced  
 99 module coursework approved by the Florida Building Commission,  
 100 as part of the building code training program established in s.

101 553.841, specific to the discipline or, pursuant to  
 102 authorization by the certifying authority, provides proof of  
 103 completion of such coursework within 6 months after such  
 104 certification; and

105 (d) Has not had a license suspended or revoked within the  
 106 last 5 years.

107 ~~(3)~~~~(2)~~ A local government may charge a registration fee  
 108 for reciprocity, not to exceed \$25.

109 Section 4. Section 489.5335, Florida Statutes, is amended  
 110 to read:

111 489.5335 Journeyman; reciprocity; standards.—

112 (1) Counties and municipalities are authorized to issue  
 113 journeyman licenses in the electrical and alarm system trades.

114 ~~(2)~~~~(1)~~ An individual who holds a valid, active journeyman  
 115 license in the electrical or alarm system trade issued by any  
 116 county or municipality in this state may work as a journeyman in  
 117 the trade in which he or she is licensed in any other county or  
 118 municipality of this state without taking an additional  
 119 examination or paying an additional license fee, if he or she:

120 (a) Has scored at least 70 percent, or after October 1,  
 121 1997, at least 75 percent, on a proctored journeyman Block and  
 122 Associates examination or other proctored examination approved  
 123 by the board for the ~~electrical~~ trade in which he or she is  
 124 licensed;

125 (b) Has completed an apprenticeship program registered

126 with a registration agency defined in 29 C.F.R. s. 29.2 and  
 127 demonstrates 4 years' verifiable practical experience in the  
 128 ~~electrical~~ trade for which he or she is licensed, or  
 129 demonstrates 6 years' verifiable practical experience in the  
 130 ~~electrical~~ trade for which he or she is licensed;

131 (c) Has satisfactorily completed specialized and advanced  
 132 module coursework approved by the Florida Building Commission,  
 133 as part of the building code training program established in s.  
 134 553.841, specific to the discipline, or, pursuant to  
 135 authorization by the certifying authority, provides proof of  
 136 completion of such curriculum or coursework within 6 months  
 137 after such certification; and

138 (d) Has not had a license suspended or revoked within the  
 139 last 5 years.

140 ~~(3)~~<sup>(2)</sup> A local government may charge a registration fee  
 141 for reciprocity, not to exceed \$25.

142 Section 5. This act shall take effect July 1, 2020.

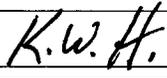


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 487 Fire Prevention and Control

**SPONSOR(S):** Government Operations & Technology Appropriations Subcommittee, Fetterhoff

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1092

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 0 N	Salter	Cooper
2) Government Operations & Technology Appropriations Subcommittee	10 Y, 0 N, As CS	Helping	Topp
3) Commerce Committee		Salter 	Hamon 

### SUMMARY ANALYSIS

Cancer has become the second leading cause of death among firefighters. Firefighters have a higher risk of diagnosis and death from cancer than the general U.S. population. Following certain procedures and using specific equipment has been shown to provide enhanced protection for firefighters against frequent exposure to cancer causing agents.

The Division of State Fire Marshal (DSFM), Office of the Director, is located within the Department of Financial Services (DFS). The Division is comprised of the Bureau of Fire Prevention and the Bureau of Fire Standards and Training.

The bill creates the Firefighter Cancer Decontamination Equipment Grant Program within DSFM to provide financial assistance in an effort to help protect firefighters from acquiring cancer. Funds allocated through this program can be used for equipment, supplies, and education training related to mitigating exposure to hazardous fire contaminants. The program will award grants on a need-based basis and require grant recipients to contribute a minimum of 25 percent nonstate funding. DSFM is given rulemaking authority to adopt rules and procedures for the program.

The bill provides a \$250,000 appropriation to DFS for the Firefighter Cancer Decontamination Equipment Grant Program. The bill has no fiscal impact on local government revenue or expenditures. See *Fiscal Analysis & Economic Impact Statement*.

The bill has an effective date of July 1, 2020.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Cancer has become the second leading cause of death to firefighters.<sup>1</sup> Cancer caused 61 percent of career firefighter line of duty deaths between January 1, 2002 and December 31, 2016.<sup>2</sup> Firefighters have a 9 percent higher risk of being diagnosed with cancer and a 14 percent higher risk of dying from cancer than the general U.S. population.<sup>3</sup>

Inhalation of dangerous chemicals is one of many cancer-causing risks associated with firefighting, as well as skin absorption.<sup>4</sup> Newer homes are made with high levels of plastics and synthetics, intensifying the carcinogenic atmosphere firefighters work in.<sup>5</sup> While performing firefighting activities, body temperature usually increases 3-5 degrees.<sup>6</sup> With every 5 degree increase in skin temperature, the skin's absorption rate increases by 400%.<sup>7</sup> The neck area is one of the most likely areas to become contaminated with toxic chemicals, even with the protection of a hood.<sup>8</sup> Firefighters who have only a single hood experience heightened exposure to hazardous, cancer-causing chemicals, since they cannot immediately decontaminate their hood after use.

In 2016, Florida law established the Firefighter Assistance Grant Program, to annually provide financial assistance to volunteer and combination fire departments.<sup>9</sup> Grants offered through this program are awarded based on the Florida Fire Service Needs Assessment Survey, which is to be conducted annually by applicants.<sup>10</sup> The goal of the Firefighter Assistance Grant Program is to improve firefighter safety and enable fire departments to provide services to their communities.

In August, 2018, DFS distributed a grant of one million dollars to be dispersed to Florida fire departments. Partial funds were allocated to decontamination kits, used for further prevention of cancer. Over 4,200 kits have been distributed to 405 Florida fire departments, each containing a 5-gallon bucket, detergents, scrub brushes, hoses, and spray bottles, all of which are used to effectively clean gear following a fire.<sup>11</sup>

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<sup>1</sup> *Firefighter Cancer Alliance*, Firefighter Cancer Alliance, 2018.

<sup>2</sup> Robert Daniels, *NIOSH Science Blog*, Centers for Disease and Control Prevention (May 2017), [blogs.cdc.gov/niosh-science-blog/2017/05/10/ff-cancer-facts/](https://blogs.cdc.gov/niosh-science-blog/2017/05/10/ff-cancer-facts/) (last visited Nov. 27, 2019).

<sup>3</sup> National Institute for Occupational Safety and Health conducted a study on 30,000 firefighters located in three different metro areas, focusing on understanding the potential link between firefighting and cancer.

<sup>4</sup> *Taking Action against Cancer in the Fire Service*, Firefighter Cancer Support Network (Aug. 2013), <https://firefightercancersupport.org/wp-content/uploads/2017/11/taking-action-against-cancer-in-the-fire-service-pdf.pdf> (last visited Nov. 25, 2019).

<sup>5</sup> Marilyn Meyer, *Florida Doesn't Have a Presumptive-Cancer Law*, *The Ledger* (Oct. 2017), <https://www.theledger.com/news/20171021/florida-doesnt-have-presumptive-cancer-law> (last visited Nov. 20, 2019) (quoting Jim Davis, Program Coordinator at Polk State College Fire Science Technology Program).

<sup>6</sup> *Firefighter Cancer Reduction and Decontamination Suggested Guideline*, NJ Department of Community Affairs.

<sup>7</sup> *Taking Action Against Cancer in the Fire Service*, Firefighter Cancer Support Network (Aug. 2013).

<sup>8</sup> Kenneth Fent, et al, *Evaluation of Dermal Exposure to Polycyclic Aromatic Hydrocarbons in Fire Fighters*, U.S. Department of Health and Human Services Centers for Disease Control and Prevention National Institute for Occupational Safety and Health, Dec. 2013. Report No. 2010-0156-3196.

<sup>9</sup> S. 633.135, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *CFO and State Fire Marshal Jimmy Patronis Delivers Cancer-Fighting Kits to Orange County Fire Rescue*, Press Release (Aug. 2018) <https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=5083> (last visited Nov. 20, 2019).

Studies have been conducted to determine the best ways to help firefighters prevent cancer on and off the job.<sup>12</sup> These steps include immediate decontamination of equipment, wearing full personal protective equipment throughout an entire incident, providing a second set of gear to each firefighter within a department, and keeping contaminated equipment out of interior areas, especially following exposure to combustion.<sup>13</sup> When a firefighter enters an atmosphere with fire, smoke, or byproducts of combustion, he or she comes into contact with a number of cancer-causing chemicals, including but not limited to arsenic, benzene, cadmium, chlorophenols, carbon monoxide, formaldehyde, and vinyl chloride.<sup>14</sup> Proper education, use, and storage of equipment will lessen the extent of contact with these hazardous post-fire contaminants. With only a single set of gear, a firefighter must wait until the end of a shift to decontaminate his or her gear, potentially elongating exposure to cancer-causing chemicals. Funds from this program will assist departments' abilities to have the proper gear and equipment offered to all firefighters.

The Federal Government has appropriated funds to assist the Centers for Disease Control and Prevention in creating and maintaining a registry of firefighters, in an effort to track occupational history and related incidences of cancer.<sup>15</sup> Additionally, the National Fire Protection Association requires firefighters to receive annual medical examinations, improving efforts to track the correlation between work and health.<sup>16</sup>

### **Effect of Proposed Changes**

The bill creates the Firefighter Cancer Decontamination Equipment Grant Program (program), within DSFM, to assist in protecting firefighters from exposure to hazardous post-fire contaminants.

The program will award financial assistance to fire departments, including volunteer departments, on a need-based basis. Grant applicants must include a minimum of 25 percent nonstate funding. Funds awarded will assist fire departments in purchasing equipment like decontamination kits and additional personal protective gear, used to reduce the risk of cancer. Fire departments can also allocate grant funds to other equipment and educational training.

The DSFM is given rulemaking authority to adopt rules and procedures for the program that require grant recipients to:

- Report their activity to the DSFM for submission in the Fire and Emergency Incident Information Reporting System created under s. 633.136, F.S.
- Comply with the Florida Firefighters Occupational Safety and Health Act, under ss. 633.502-633.536, F.S.
- Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program.

The bill provides \$250,000 in recurring funds from the Insurance Regulatory Trust Fund to implement the program.

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<sup>12</sup> See generally, Chief Todd J. LeDuc, *6 Ways to Reduce Cancer in the Fire Service*, International Fire Chiefs Association (Nov. 2019), <https://www.iafc.org/iCHIEFS/iCHIEFS-article/6-ways-to-reduce-cancer-in-the-fire-service> (last visited Nov. 25, 2019); Chief James P. Seavey Sr., *Lavender Ribbon Report: 11 Actions to Mitigate the Risk of Cancer*, International Fire Chiefs Association (Aug. 2018), [https://www.iafc.org/docs/default-source/1vcos/vcoslavendarribbonreport.pdf?sfvrsn=13f88b0d\\_8](https://www.iafc.org/docs/default-source/1vcos/vcoslavendarribbonreport.pdf?sfvrsn=13f88b0d_8) (last visited Nov. 25, 2019). Grace LeMasters, et al., *Cancer Risk Among Firefighters: A Review and Meta-Analysis of 32 Studies*. *J Occup. Environ. Med.*, 48, 1189-202 (2006).

<sup>13</sup> *Lavender Ribbon Report: 11 Actions to Mitigate the Risk of Cancer*, pg. 9.

<sup>14</sup> Jesse Roman, *Facing Cancer*, National Fire Protection Association Journal (May 2017), <https://www.nfpa.org/News-and-Research/Publications-and-media/NFPA-Journal/2017/May-June-2017/Features/Facing-Cancer> (last visited Nov. 25, 2019).

<sup>15</sup> Firefighter Cancer Registry Act of 2018, H.R. 931, 115th Cong. (2018).

<sup>16</sup> NFPA 1582: Standard on Comprehensive Occupational Medical Program for Fire Departments, Chapter 7.

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 633.137, F.S., relating to the Firefighter Cancer Decontamination Equipment Grant Program.

**Section 2:** Provides an appropriation.

**Section 3:** Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill provides \$250,000 in recurring funds from the Insurance Regulatory Trust Fund to implement the program. According to DFS, the program will not require staffing beyond current resources.<sup>17</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

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<sup>17</sup> Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, Department of Financial Services, RE: HB 487 Decontamination Grant Program Questions (Nov. 22, 2019).

**B. RULE-MAKING AUTHORITY:**

DSFM is given rulemaking authority to adopt rules and procedures for the Firefighter Cancer Decontamination Equipment Grant Program.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On Wednesday, January 15, 2020, the Government Operations & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided \$250,000 in recurring funds from the Insurance Regulatory Trust Fund to implement the program.

This analysis is drafted to the committee substitute as passed by the Government Operations & Technology Appropriations Subcommittee.

1                                   A bill to be entitled  
2       An act relating to fire prevention and control;  
3       creating s. 633.137, F.S.; creating the Firefighter  
4       Cancer Decontamination Equipment Grant Program for  
5       certain purposes; requiring the Division of State Fire  
6       Marshal to administer the program and annually award  
7       grants to qualifying fire departments; requiring the  
8       State Fire Marshal to adopt rules and procedures;  
9       providing eligibility requirements; providing  
10      requirements for grant recipients; providing an  
11      appropriation; providing an effective date.

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

14  
15       Section 1. Section 633.137, Florida Statutes, is created  
16 to read:

17       633.137 Firefighter Cancer Decontamination Equipment Grant  
18 Program.—

19       (1) The Firefighter Cancer Decontamination Equipment Grant  
20 Program is created within the division to help protect the  
21 health and safety of firefighters in this state. The program  
22 shall provide financial assistance to help fire departments,  
23 including volunteer fire departments, procure equipment,  
24 supplies, and educational training designed to mitigate exposure  
25 to hazardous, cancer-causing chemicals.

26           (2) The division shall administer the program and annually  
 27 award grants to fire departments on a need-based basis. The  
 28 division shall distribute equipment and training in a manner  
 29 that leads to the greatest reduction in incidences of  
 30 firefighters being exposed to hazardous post-fire contaminants.

31           (3) The State Fire Marshal shall adopt rules and  
 32 procedures for the program, including for the approval of  
 33 applications and development of need-based criteria. This  
 34 criteria shall include, but is not limited to, the  
 35 decontamination equipment and supply needs of the fire  
 36 department, the financial needs of the fire department, and the  
 37 level of nonstate matching funds proposed in the application.  
 38 Grant applications must include a minimum of 25 percent nonstate  
 39 funding.

40           (4) Grant recipients must:

41           (a) Report their activity to the division for submission  
 42 in the Fire and Emergency Incident Information Reporting System  
 43 created under s. 633.136.

44           (b) Comply with the Florida Firefighters Occupational  
 45 Safety and Health Act, ss. 633.502-633.536.

46           (c) Comply with any other rule determined by the State  
 47 Fire Marshal to effectively and efficiently implement,  
 48 administer, and manage the program.

49           Section 2. For the 2020-2021 fiscal year, the sum of  
 50 \$250,000 in recurring funds is appropriated from the Insurance

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2020

51 | Regulatory Trust Fund to the Department of Financial Services  
52 | for the purpose of implementing s. 633.137, Florida Statutes, as  
53 | created by this act.

54 |       Section 3. This act shall take effect July 1, 2020.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 511 Insulation Products  
**SPONSOR(S):** Business & Professions Subcommittee, Fine  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 732

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Brackett	Anstead
2) Commerce Committee		Brackett <i>DB</i>	Hamon <i>K.W.H.</i>

### SUMMARY ANALYSIS

Federal laws regulate the manufacture, sale and advertising of residential insulation products. The Federal Trade Commission (FTC) has jurisdiction over the testing, manufacturing, sale, and advertising of residential insulation products. The FTC requires residential insulation products to be tested in accordance with the tests designed by ASTM International (ASTM). States are permitted to enact laws that are not inconsistent and do not frustrate the FTC's regulations.

The bill provides that any person who manufactures a product that is advertised, sold, offered, provided, marketed, or distributed as an interior building envelope insulation product for residential dwellings, not including pipe insulation or duct insulation, without a valid test report stating the product complies with the Florida Building Code and the ASTM standard required by the FTC, is subject to a Florida Deceptive and Unfair Trade Practices Act action brought by an enforcing authority. Such report must come from a Florida Building Commission approved testing laboratory.

The bill provides that the test report for interior building envelope insulation products for residential dwellings must be provided to a building official upon request.

The bill defines "residential dwelling" to include one-family, two-family, three-family residences, townhomes, residential condominiums and cooperatives, apartments, residential manufactured buildings, residential modular buildings, residential factory buildings, and mobile homes.

The bill does not have a fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2020.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

###### *Federal Trade Commission*

The Federal Trade Commission Act grants the FTC the authority to:<sup>1</sup>

- Prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce;
- Seek monetary redress and other relief for conduct injurious to consumers;
- Prescribe rules defining with specificity acts or practices that are unfair and deceptive, and establish requirements designed to prevent such acts or practices;
- Gather and compile information and conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce; and
- Make reports and legislative recommendations to Congress and the public.

The FTC regulates home insulation products as part of its job to prevent unfair or deceptive acts or practices in or affecting commerce. The FTC started regulating home insulation products in 1979 to address the failure of the home insulation market to provide consumers with essential pre-purchase information about home insulation products, specifically an insulation product's R-value.<sup>2</sup> R-value measures resistance to heat flow. The higher the R-value, the greater the effectiveness of the insulation.<sup>3</sup>

Home insulation is insulation that is used in old or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes. It does not include pipe insulation<sup>4</sup> or any kind of duct insulation except for duct wrap.<sup>5</sup> The FTC defines "insulation" as any material mainly used to slow down heat flow. It may be mineral or organic, fibrous, cellular, or reflective.<sup>6</sup>

On May 13, 2019, the FTC published notice that effective May 13, 2020, home insulation will also include insulation developed and marketed for commercial use that is also marketed for and used in residential buildings.<sup>7</sup>

Any violation of the regulations for home insulation products is an unfair and deceptive act or practice or an unfair method of competition under the Federal Trade Commission Act, and can result in a heavy fine. A person may be fined up to \$10,000 for each violation.<sup>8</sup>

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<sup>1</sup> See 15 U.S.C. § 41-58; Federal Trade Commission, *Federal Trade Commission Act*, <https://www.ftc.gov/enforcement/statutes/federal-trade-commission-act> (last visited Nov. 24, 2019).

<sup>2</sup> 84 Fed. Reg. 20788 (May 13, 2019).

<sup>3</sup> 16 C.F.R. 460.5 & 12.

<sup>4</sup> The FTC chose not to regulate pipe insulation because it is primarily used to prevent moisture condensation on low temperature lines and not for energy conservation. 64 Fed. Reg. 48027 (Sep. 1, 1999).

<sup>5</sup> The FTC chose not to regulate duct insulation except for duct wrap because only duct wrap is used extensively in residential properties. *Id.*

<sup>6</sup> 16 C.F.R. § 460.1-2.

<sup>7</sup> 84 Fed. *supra* note 3.

<sup>8</sup> 15 U.S.C. § 45(m).

All types of home insulation products must be tested by laboratories to determine their R-Value. The tests to determine the R-value of home insulation products must be done in accordance with the tests designed by ASTM International (ASTM).<sup>9</sup>

All manufacturers of home insulation products and laboratories that test home insulation products must keep records of each test for at least three years.<sup>10</sup>

Manufacturers must also label every package of their home insulation products and provide fact sheets to retailers and installers. The labels must contain:

- The type of insulation product in the package.
- A chart that includes the product's information including the R-value, which must be rounded to the nearest tenth except for products with R-values of 10 or more which may be rounded to the nearest whole number.
- A statement saying that R means resistance to heat flow. The higher the R-value, the greater the insulating power, and in order to get the marked R-value the product must be installed correctly.<sup>11</sup>

The fact sheet must include:

- The name and address of the manufacturer;
- The type of insulation product in the package;
- A chart that includes the product's information including the R-value, which must be rounded to the nearest tenth except for products with R-values of 10 or more which may be rounded to the nearest whole number.
- A statement saying that, R means resistance to heat flow. The higher the R-value, the greater the insulating power, in order to get the marked R-value the product must be installed correctly, and the amount of insulation a person needs depends on the climate they live in along with the size and type of their house, the amount of insulation already in their house, and the fuel use of their family.<sup>12</sup>

Home insulation product retailers must make the fact sheets for their products available to their customers. Retailers must ensure that the fact sheets are in an area that a customer will notice them. New home sellers must ensure their sales contracts include the information, including the R-value, of each type of insulation product that has been installed in a home.<sup>13</sup> Home installation installers have similar notice requirements.<sup>14</sup>

Manufacturers must ensure that any advertisement for their home insulation product, which includes a price for the product in the ad, includes the product's information, including R-value, and a statement saying, "The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values."<sup>15</sup> Manufacturers must also ensure that any advertisement for their home insulation products, which states or implies the product can cut energy costs or usage, is supported by a reasonable basis for the claim, and includes a statement saying, "Savings vary. Find out why in the seller's fact sheet on R-values. Higher R-values mean greater insulating power."<sup>16</sup>

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<sup>9</sup> 16 C.F.R. § 460.5. ASTM is an international testing organization that develops and publishes technical standards that are arrived at through consensus and used on a voluntary basis for a wide variety of products, materials, systems and services. ASTM International, *Detailed Overview*, [https://www.astm.org/ABOUT/full\\_overview.html](https://www.astm.org/ABOUT/full_overview.html) (last visited Nov. 25, 2019).

<sup>10</sup> 16 C.F.R. § 460.9.

<sup>11</sup> 16 C.F.R. § 460.11-13.

<sup>12</sup> *Id.*

<sup>13</sup> 16 C.F.R. § 460.14 & 16.

<sup>14</sup> 16 C.F.R. § 460.15 & 17.

<sup>15</sup> 16 C.F.R. § 460.18-19.

<sup>16</sup> *Id.*

The FTC does not require manufacturers, retailers, or installers to provide any information about a home insulation product to a local building official.

Any state and local laws and regulations that are inconsistent with, or frustrate the purposes of, the FTC's regulations are preempted. However, a State or local government may petition the Commission, for good cause, to permit the enforcement of any part of a State or local law or regulation that would be preempted by this section.<sup>17</sup>

### *The Florida Building Code*

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.<sup>18</sup>

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.<sup>19</sup> The current edition of the Building Code is the sixth edition, which is referred to as the 2017 Florida Building Code.<sup>20</sup>

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>21</sup>

The Florida Building Commission (Commission) implements the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation, is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.<sup>22</sup> The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.<sup>23</sup>

### *Enforcement of the Florida Building Code*

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.<sup>24</sup>

Every local government must enforce the Building Code and issue building permits.<sup>25</sup> It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without

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<sup>17</sup> 16 C.F.R. § 460.23.

<sup>18</sup> The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at [http://www.floridabuilding.org/fbc/publications/2006\\_Legislature\\_Rpt\\_rev2.pdf](http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf) (last visited Nov. 11, 2019).

<sup>19</sup> *Id.*

<sup>20</sup> Florida Building Commission Homepage <https://floridabuilding.org/c/default.aspx> (last visited Nov. 11, 2019).

<sup>21</sup> See s. 553.72(1), F.S.

<sup>22</sup> S. 553.74, F.S.

<sup>23</sup> S. 553.73, F.S.

<sup>24</sup> S. 553.72, F.S.

<sup>25</sup> Ss. 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.

first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.<sup>26</sup>

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.<sup>27</sup> A building official is a local government employee or a person contracted by a local government who supervises Building Code activities, including plan review, enforcement, and inspection.<sup>28</sup> Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the Building Code.<sup>29</sup>

### *Insulation Requirements for a Building's Thermal Envelope*

The Building Code defines "building thermal envelope" as a building's basement, walls, exterior walls, floor, roof, and any other building elements that enclose an area that is directly or indirectly heated or cooled. The building thermal envelope also includes the boundary between a conditioned space and an unconditioned space.<sup>30</sup>

The Building Code requires certain types of insulation for a building's thermal envelope depending on where the insulation is located. The Building Code requires insulation to have a certain type of R-value depending on where the insulation is located. For example, the Building Code requires insulation for ceilings to have a different R-value than the insulation required for walls. R-value measures resistance to heat flow. The higher the R-value, the greater the effectiveness of the insulation.<sup>31</sup>

### *Product Evaluation and Approval*

Current law requires the Commission to develop and implement an approval of products for statewide use. The Commission has created a product approval system for products and systems that makeup the building envelope and structural frame of a building.<sup>32</sup> The Commission does not approve products for the interior of a building, including interior insulation products.<sup>33</sup> The Commission approves the products in the following categories for statewide use:<sup>34</sup>

- Panel Walls;
- Exterior Doors;
- Roofing Products;
- Skylights;
- Windows;
- Shutters;
- Structural Components; and
- Impact Protective Systems.

To obtain state approval, a manufacturer must demonstrate a product complies with the applicable standards and provisions of the Building Code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;

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<sup>26</sup> See Ss. 125.56(4)(a) & 553.79(1), F.S.

<sup>27</sup> S. 202 of the Building Code (Building), Sixth Edition.

<sup>28</sup> S. 468.603(2), F.S.

<sup>29</sup> Ss. 107 & 110 of the Building Code (Building), Sixth Edition.

<sup>30</sup> S. 202 of the Building Code (Energy Conservation), Sixth Edition.

<sup>31</sup> Ss. 202 & 402 of the Building Code (Energy Conservation), Sixth Edition; Department of Energy, *Insulation*, <https://www.energy.gov/energysaver/weatherize/insulation> (last visited Nov. 25, 2019).

<sup>32</sup> S. 553.842(1), F.S.; R. 61G20-3.001, F.A.C.

<sup>33</sup> Email from Colton Madill, Deputy Legislative Affairs Director, Department of Business & Professional Regulation, HB 511 Question (Nov. 18, 2019).

<sup>34</sup> R. 61G20-3.001, F.A.C.

- A product evaluation report developed, signed and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following evaluation entities:
  - The National Evaluation Service;
  - The International Association of Plumbing and Mechanical Officials Evaluation Service;
  - The International Code Council Evaluation Services;
  - Underwriters Laboratories, LLC;
  - The International Conference of Building Officials;
  - SBCCI Public Safety Testing and Evaluation Services, Inc.;
  - Intertek Testing Services NA, Inc.; or
  - The Miami-Dade County Building Code Compliance Office Product Control Division.<sup>35</sup>

### *Approved Testing Laboratories*

The Commission must approve an entity as an approved testing laboratory if it receives accreditation indicating that it meets the Commission's approved standards for testing laboratories, and it receives a certification of independence.<sup>36</sup>

An entity may receive accreditation from one of the following bodies:<sup>37</sup>

- The American Association for Laboratory Accreditation;
- The National Voluntary Laboratory Accreditation Program;
- One of the approved evaluation entities; or
- Any other approved accreditation bodies that meet the Commission's approved standards.

The Commission must issue a certificate of independence to a testing laboratory if an officer who is responsible for operation of the laboratory attests that the laboratory:<sup>38</sup>

- Does not have, nor does it intend to acquire or will it acquire, a financial interest in any company manufacturing or distributing products tested or labeled by the laboratory.
- Is not owned, operated or controlled by any company manufacturing or distributing products it tests or labels.

### *Florida Deceptive and Unfair Trade Practices Act*

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) declares that any unfair or deceptive acts or practices committed in the conduct of any trade or commerce is unlawful.<sup>39</sup> The purpose of FDUTPA is to:<sup>40</sup>

- Simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.
- Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.
- Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

<sup>35</sup> S. 553.842, F.S.; DBPR, Product Evaluation Entity List, [https://www.floridabuilding.org/pr/pr\\_org\\_lst.aspx](https://www.floridabuilding.org/pr/pr_org_lst.aspx) (last visited Nov. 11, 2019).

<sup>36</sup> The Commission's approved standards for test laboratories is the International Organization for Standardization/International Electrotechnical Commission Guide 17025: General Requirements for the Competence of Calibration and Testing Laboratories, any standards referenced by the Building Code, or any standards that meet or exceed the first edition of the Building Code, which is referred to as the 2001 edition of the Building Code. R. 61G20-3.008(3), F.A.C.; R. 61G20-3.015, F.A.C.; R. 61G20-3.009, F.A.C.

<sup>37</sup> S. 553.842(8)(b), F.S.; R. 61G20-3.008(3).

<sup>38</sup> R. 61G20-3.009, F.A.C.

<sup>39</sup> See Ch. 501, part II, F.S.

<sup>40</sup> S. 501.202, F.S.

Investigative and enforcement authority under FDUTPA is given to enforcing authorities. A state attorney is an enforcing authority if a violation occurs in or affects the judicial circuit under the office's jurisdiction. The Department of Legal Affairs within the Florida Office of the Attorney General (Department) is also an enforcing authority, and has investigative and enforcement authority if a violation occurs in or affects more than one judicial circuit or if the state attorney defers to the Department.<sup>41</sup>

These enforcing authorities may, within 4 years after the occurrence of a violation or within 2 years after the last payment in a transaction involved in a violation, bring an action:

- To obtain a declaratory judgment that an act or practice violates FDUTPA;
- To enjoin any person who has violated, is violating, or is otherwise likely to violate FDUTPA; or
- On behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of FDUTPA.<sup>42</sup>

Enforcing authorities may collect a civil penalty of up to \$10,000 per violation plus reasonable attorney's fees and costs for willful violations of FDUTPA and up to \$15,000 plus reasonable attorney's fees and costs for willful violations of FDUTPA involving a senior citizen, a person who has a disability, a military service member, or the spouse or dependent child of a military service member.<sup>43</sup> The Department also has authority to issue a cease and desist order if it would be in the interest of the public.<sup>44</sup>

If an enforcing authority receives a complaint regarding a person who is subject to other supervision in the state, such enforcing authority must inform the supervising agency.<sup>45</sup>

Current law provides that an enforcing authority bring an action against any person who advertises, sells, offers, provides, distributes, or markets a product as hurricane, windstorm, or impact protection from wind-borne debris without approval by the Commission.<sup>46</sup>

FDUTPA also provides a private cause of action for anyone aggrieved by a violation of FDUTPA to:

- Obtain a declaratory judgement that an act or practice violates FDUTPA;
- Enjoin a person who has violated, is violating, or is otherwise likely to violate FDUTPA; and
- Recover actual damages plus reasonable attorney's fees and costs.<sup>47</sup>

### **Effect of the Bill**

The bill provides that any person who manufactures a product that is advertised, sold, offered, provided, marketed, or distributed as an interior building envelope insulation product for residential dwellings, not including pipe insulation or duct insulation, without a valid test report stating the product complies with the Florida Building Code and the ASTM standard required by the FTC, is subject to a FDUTPA action brought by an enforcing authority. Such report must come from a Florida Building Commission approved testing laboratory.

The bill provides that the test report for interior building envelope insulation products for residential dwellings must be provided to a building official upon request. A product evaluation report may not be used in lieu of a test report.

The bill defines "residential dwelling" to include one-family, two-family, three-family residences, townhomes, residential condominiums and cooperatives, apartments, residential manufactured buildings, residential modular buildings, residential factory buildings, and mobile homes.

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<sup>41</sup> Ss. 501.203(2), 501.206, & 501.207, F.S.

<sup>42</sup> Ss. 501.207(1) & (5), F.S.

<sup>43</sup> Ss. 501.2075, 501.2077, & 501.2105, F.S.

<sup>44</sup> S. 501.208(1), F.S.

<sup>45</sup> S. 501.209, F.S.

<sup>46</sup> S. 553.842(5), F.S.

<sup>47</sup> Ss. 501.2105 and 501.211, F.S.

The bill also defines “manufacture” to mean the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, semifinished, or finished materials.

**B. SECTION DIRECTORY:**

Section 1. Creates s. 553.843, F.S., providing requirements for providing interior insulation products for certain buildings and providing a cause of action.

Section 2. Provides an effective date of July 1, 2020.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have a positive impact on the private sector and consumers by ensuring that local building officials know whether insulation products meet the applicable standards of the Building Code, and those standards set by the FTC.

**D. FISCAL COMMENTS:**

Ensuring that insulation products meet the applicable standards of the Building Code may result in a reduction in energy costs for consumers.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to effect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill does not appear to be inconsistent with or frustrate the FTC's regulations for home insulation products.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 15, 2020, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Limits the bill's application to residential dwellings except for pipe insulation and duct insulation.
- Defines "residential dwellings" to include, one-, two-, and three- family residences, townhomes, residential condominiums and cooperatives, apartments, residential manufactured buildings, residential modular buildings, residential factory buildings, and mobile homes.
- Limits the applicability of the bill's requirements to manufacturers of interior insulation products.
- Provides that a product evaluation report may not be used to comply with the bill's requirements in lieu of the test report.
- Clarifies that the test reports must indicate that the products meet the ASTM standards required by the FTC.

1                                   A bill to be entitled  
 2           An act relating to insulation products; creating s.  
 3           553.843, F.S.; providing definitions; specifying that  
 4           a person who takes certain actions relating to  
 5           interior building envelope insulation products for  
 6           residential dwellings without having a certain test  
 7           report is subject to the Florida Deceptive and Unfair  
 8           Trade Practices Act; requiring that such test report  
 9           be provided, upon request, to a local building  
 10          official; providing that a product evaluation report  
 11          may not be provided in lieu of the test report;  
 12          providing an effective date.

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

15  
 16           Section 1. Section 553.843, Florida Statutes, is created  
 17 to read:

18           553.843 Interior building envelope insulation products.-

19           (1) For purposes of this section, the term:

20           (a) "Manufacture" has the same meaning as in s. 553.36.

21           (b) "Residential dwelling" includes one-family, two-  
 22 family, and three-family residences; townhomes; residential  
 23 condominiums; residential cooperatives; apartments; residential  
 24 manufactured buildings; residential modular buildings;  
 25 residential factory buildings; and mobile homes.

26        (2) Any person who manufacturers a product that is  
27 advertised, sold, offered, provided, distributed, or marketed as  
28 interior building envelope insulation for residential dwellings,  
29 not including pipe insulation or duct insulation, without a  
30 valid test report from a commission-approved testing laboratory  
31 indicating that the product complies with the Florida Building  
32 Code and the ASTM International standard for the product as  
33 provided by the Federal Trade Commission regulations in 16  
34 C.F.R. ss. 460.1 et seq., is subject to the Florida Deceptive  
35 and Unfair Trade Practices Act under part II of chapter 501, if  
36 brought by the enforcing authority as defined in s. 501.203. The  
37 test report for interior building envelope insulation products  
38 for residential dwellings must be provided, upon request, to a  
39 local building official. A product evaluation report may not be  
40 provided in lieu of the test report.

41        Section 2. This act shall take effect July 1, 2020.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 519 Private Property Rights Protection  
**SPONSOR(S):** Civil Justice Subcommittee, Grant, J.  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 5 N, As CS	Jones	Luczynski
2) Commerce Committee		Thompson <i>JT</i>	Hamon <i>K.W.H.</i>
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Takings Clause of the U.S. Constitution prohibits the government from depriving a person of his or her private property for public use "without just compensation." However, not every government action burdening private property amounts to an illegal "taking" under the Takings Clause. Florida law provides legal remedies when a local government burdens property rights in a manner that does not amount to a "taking":

- If a local government enacts a regulation inordinately burdening private property:
  - The property owner may notify the government of the burden;
  - The government must make a written offer to settle the claim; and
  - The property owner may:
    - Accept the settlement offer; or
    - Reject the offer, and file a lawsuit against the government for damages.
- If the local government unreasonably rejects or limits a property owner's proposed use of his or her property, otherwise known as an "exaction," the property owner may sue the government after providing notice and allowing the government a chance to explain why the exaction is lawful, or remove the exaction.

Another mechanism for a landowner to resolve disputes against government action is the Florida Land Use and Environmental Dispute Resolution Act, which provides an informal process to challenge government action infringing on property rights without having to file a lawsuit.

CS/HB 519 requires a local government, when settling property rights claims, to treat similar properties similarly. If the government settles or the property owner secures a judgment declaring an inordinate burden, there is a presumption that similarly situated parcels are also inordinately burdened and entitled to the same settlement terms or judicial determination. The bill also makes it easier for a private property owner to challenge a local regulation burdening his or her property by:

- Allowing a jury or the court to consider business damages in making its damages calculation.
- Removing a provision allowing the government to seek attorney fees and costs when a property owner refuses a bona fide offer which reasonably would have resolved the property claim fairly.

When a local government is poised to impose an exaction upon private property, the bill allows the property owner to sue without having to wait for written notice of the exaction. The bill requires the Department of Transportation to give a right of first refusal to a previous owner before disposing of property in certain cases. The bill also broadens the applicability of the Florida Land Use and Environmental Dispute Resolution Act and provides for the recovery of attorney fees and costs in certain situations if a government acts in bad faith.

The bill does not appear to have a fiscal impact on state government, but appears to have an indeterminate negative impact on local governments.

The bill provides an effective date of July 1, 2020.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 1/26/2020

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Takings Clause

The U.S. Constitution prohibits the government from depriving a person of his or her private property for public use "without just compensation."<sup>1</sup> However, some government actions restrict the use of private property without amounting to a "taking" as contemplated by the U.S. Constitution.

##### Bert J. Harris, Jr., Private Property Rights Protection Act

In 1995, the Florida Legislature enacted the Bert J. Harris, Jr., Private Property Rights Protection Act (Bert Harris Act), codified as s. 70.001, F.S.<sup>2</sup> The Bert Harris Act created a new cause of action for private property owners whose real property is inordinately burdened by a government action<sup>3</sup> not rising to the level of a taking.<sup>4</sup> The inordinate burden can apply in the context of either an existing use of real property or a vested right to a specific use.<sup>5</sup>

Before filing an action under the Bert Harris Act, a claimant must generally give 150 days' notice to the government entity, along with a valid appraisal showing the loss in fair market value.<sup>6</sup> The government must notify all property owners adjacent to the claimant's property of the pending claim. The government must make a written settlement offer to the claimant, which may include an offer to:

- Adjust land development or permit standards;
- Transfer developmental rights;
- Land swaps or exchanges;
- Mitigation;
- Conditioning the amount of development or use permitted;
- Issue a development order, variance, special exception, or other extraordinary relief;
- Purchase the property or an interest therein; or
- Other actions, including making no changes to the proposed government action.<sup>7</sup>

This encourages settlement of property rights claims and allows a government to settle individually with each property owner to avoid unnecessarily burdening property rights.

The property owner may reject the settlement offer and file an action in circuit court.<sup>8</sup> The court must determine whether the government inordinately burdened the property, and if so, calculate the percentage of responsibility for each government entity. A jury must determine damages and cannot consider any business damages relative to development, activity, or use the government has restricted or prohibited.<sup>9</sup>

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<sup>1</sup> U.S. Const. amend. 5; *see also* art. I, ss. 2, 9, Fla. Const. (restricting the deprivation of private property).

<sup>2</sup> Ch. 95-181, Laws of Fla.

<sup>3</sup> S. 70.001(3)(d), F.S., provides that the term "action of a governmental entity" means a specific action of a governmental entity which affects real property, including action on an application or permit.

<sup>4</sup> S. 70.001(1), (9), F.S.

<sup>5</sup> S. 70.001(2), F.S.

<sup>6</sup> S. 70.001(4)(a), F.S.

<sup>7</sup> S. 70.001(4)(c), F.S.

<sup>8</sup> S. 70.001(5)(b), F.S.

<sup>9</sup> S. 70.001(6), F.S.

The claimant is entitled to recover costs and attorney fees incurred from the time the action was filed if:

- The claimant prevails; and
- The court determines that the settlement offer was not a bona fide offer which reasonably would have resolved the claim.

The government is entitled to recover costs and attorney fees if:

- The government prevails; and
- The court determines the claimant did not accept a bona fide settlement offer which reasonably would have resolved the claim fairly.<sup>10</sup>

A claim cannot be filed more than one year after the government applies a law or regulation to the property at issue. The one-year timeframe begins running when the law or regulation unequivocally impacts the property and notice is mailed to the property owner.<sup>11</sup> If the law or regulation does not unequivocally impact the property, or if notice is not mailed, the one-year period does not start until the government formally denies a request for development or variance.

### Private Property Rights and Unconstitutional Exactions

The doctrine of unconstitutional conditions prohibits the government from denying a benefit to a person because he or she exercises or vindicates a constitutional right.<sup>12</sup>

In 2013, in *Koontz v. St. Johns River Water Management District*,<sup>13</sup> the United States Supreme Court held that a government cannot deny a land-use permit based on the landowner's refusal to agree to the government's demands to relinquish property unless there is an essential nexus and rough proportionality between the government's demand on the landowner and the effect of the proposed land use.<sup>14</sup> Extortionate demands for property in the land-use permitting context violate the Fifth Amendment Takings Clause not because they take property, but because they impermissibly burden the right not to have property taken without just compensation.<sup>15</sup>

The property owner in *Koontz* owned land consisting primarily of wetlands. He wanted to develop part of his property and offered a conservation easement to the St. Johns River Water Management District (district). The district rejected his proposal and said it would deny his permit unless he agreed to scale back his plan and give the district a larger conservation easement or to maintain the plan but pay to improve separate land owned by the district. The district offered to consider alternative approaches as well. The property owner sued the district under s. 373.617, F.S., which allows property owners to sue a government for action related to land-use permitting that constitutes an unlawful taking.

The *Koontz* court found that while the district's conditions unconstitutionally burdened the landowner's Fifth Amendment rights, no constitutional taking had occurred. The Court left it to the states to determine remedies available to a landowner who is subjected to an unconstitutional demand, but where no actual taking occurs.<sup>16</sup> The Court explained:

Where the permit is denied and the condition is never imposed, nothing has been taken. While the unconstitutional conditions doctrine recognizes that this burdens a constitutional right, the Fifth Amendment mandates a particular remedy—just compensation—only for takings. In cases where there is an excessive demand but no taking, whether money damages are available is not a question of federal constitutional

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<sup>10</sup> S. 70.001(6)(c), F.S.

<sup>11</sup> S. 70.001(11), F.S.

<sup>12</sup> *Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586, 2594 (2013).

<sup>13</sup> *Id.* at 2586.

<sup>14</sup> *Id.* at 2595.

<sup>15</sup> *Id.* at 2596.

<sup>16</sup> *Id.* at 2597.

law but of the cause of action—whether state or federal—on which the landowner relies.<sup>17</sup>

Consequently, the Court left unanswered the question of whether the landowner in *Koontz* could recover damages for unconstitutional conditions claims predicated on the Takings Clause because the landowner's claim was based on Florida law.<sup>18</sup> Specifically, because s. 373.617, F.S., allows for damages when a state agency's action is "an unreasonable exercise of the state's police power constituting a taking without just compensation," it is a question of state law as to whether that provision covers an unconstitutional conditions claim.<sup>19</sup>

### Remedy for Unlawful Government Exaction

In 2015, the Legislature enacted s. 70.45, F.S., to provide a state cause of action against a prohibited exaction. A "prohibited exaction" is any condition imposed by the government on a property owner's proposed use of real property that lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.<sup>20</sup>

A property owner may bring an action to recover damages caused by a prohibited exaction in addition to any other remedies available in law or equity, if:

- The prohibited exaction is imposed or required, in writing, as a final condition for approval of the proposed land use; and
- At least 90 days before filing the action, but no later than 180 days after the exaction is imposed, the property owner gives the government written notice:
  - Identifying the exaction;
  - Explaining why it is unlawful; and
  - Estimating the damages.<sup>21</sup>

Upon receiving written notice of the alleged claim, the governmental entity must review the notice and respond in writing by identifying the basis for the exaction and explaining why the exaction is proportionate to the harm created by the proposed use of real property, or by proposing to remove or modify the exaction. The government's written response may only be used against it in subsequent litigation for assessing attorney fees and costs.

For a claim filed under s. 70.45, F.S., the government has the burden to prove the exaction has an essential nexus to a legitimate public purpose and is roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate. The property owner has the burden of proving damages resulting from the prohibited exaction.

The prevailing party in an action under s. 70.45, F.S., may recover attorney fees and costs. If the court determines the exaction lacks an essential nexus to a legitimate public purpose, the court must award attorney fees and costs to the property owner.

### Florida Land Use and Environmental Dispute Resolution Act

In 1995, the Legislature adopted the Florida Land Use and Environmental Dispute Resolution Act (Act) to facilitate the resolution of disputes between landowners and government entities.<sup>22</sup> The Act provides an informal mechanism for a landowner to challenge a government action that may infringe on the landowner's property without having to file a lawsuit.

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 2597-98.

<sup>20</sup> S. 70.45(1)(c), F.S.

<sup>21</sup> S. 70.45, F.S.

<sup>22</sup> *See* s. 70.51, F.S.

The Act does not create a private cause of action, nor does it require that a landowner do anything before exercising his or her right to file a lawsuit.<sup>23</sup> Under the Act, a landowner who believes that a government notice or order unfairly or unreasonably burdens his or her property may, within 30 days of receiving the notice or order, file a request for relief with the government that issued the notice or order.<sup>24</sup> The government must forward the request to a special magistrate, a person agreed upon by both parties to preside over the case.

The special magistrate must hold a hearing within 45 days of receiving the request for relief.<sup>25</sup> The special magistrate's primary role is to facilitate a resolution of the conflict between the landowner and government without involving the courts.<sup>26</sup> In this role, the special magistrate acts as a "facilitator or mediator."<sup>27</sup>

If the parties cannot reach an agreement, the special magistrate must determine whether the government action is unreasonable or unfairly burdens the landowner's real property, based on a list of statutory guidelines.<sup>28</sup> Within 14 days of the hearing's conclusion, the special magistrate must submit a written recommendation to the parties.<sup>29</sup>

If the special magistrate's recommendation is that the government action does not unreasonably or unfairly burden the property, the landowner still retains the right to file suit or pursue other remedies.<sup>30</sup> If the recommendation is that the government action unreasonably or unfairly burdens the property, the special magistrate may, if the landowner consents, recommend one or more alternatives that allow for reduced government restraints on the property.<sup>31</sup>

The government must respond within 45 days of receiving the special magistrate's recommendation, deciding whether it accepts, accepts in part, or rejects the recommendation.<sup>32</sup> If the government accepts the recommendation in whole or in part, but the landowner rejects the acceptance or modification, the government must put into writing within 30 days the specific permissible uses of the property.<sup>33</sup>

The special magistrate's recommendation finding that the government acted unreasonably or unfairly may serve as a basis to demonstrate entitlement to relief in a subsequent lawsuit or in other legal proceedings.<sup>34</sup> The process under the Act may not continue longer than 165 days, unless the parties agree otherwise.<sup>35</sup>

### Conveyance of Property by Department of Transportation

The Department of Transportation is authorized under s. 337.25, F.S., to purchase, lease, exchange, or otherwise acquire any land, property interests, buildings, or other improvements necessary to secure or use transportation rights-of-way for existing, proposed, or anticipated transportation facilities:

- On the State Highway System;
- On the State Park Road System;
- In a rail corridor; or

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<sup>23</sup> S. 70.51(24), F.S.

<sup>24</sup> S. 70.51(3) and (4), F.S.

<sup>25</sup> S. 70.51(15)(a), F.S.

<sup>26</sup> See s. 70.51(17)(a), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> S. 70.51(17)(b) and (18), F.S.

<sup>29</sup> S. 70.51(19), F.S.

<sup>30</sup> S. 70.51(19)(a), F.S.

<sup>31</sup> S. 70.51(19)(b), F.S.

<sup>32</sup> S. 70.51(21), F.S.

<sup>33</sup> S. 70.51(22), F.S.

<sup>34</sup> S. 70.51(25), F.S.

<sup>35</sup> S. 70.51(23), F.S.

- In a transportation corridor designated by the department.<sup>36</sup>

If the department determines acquired property is no longer needed for a transportation facility, it may dispose of the property.<sup>37</sup> The department may afford a right of first refusal to the local government or other political subdivision in the jurisdiction where the parcel is located, except when:

- The property was donated to the state for transportation purposes, and:
  - The facility has not been constructed for at least 5 years;
  - Plans have not been prepared; and
  - The property is not located in a transportation corridor.
- The property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects.
- At the discretion of the department, a sale to a person other than an abutting property owner would be inequitable.<sup>38</sup>

## Effect of Proposed Changes

### Bert J. Harris, Jr., Private Property Rights Protection Act

CS/HB 519 amends the Bert J. Harris, Jr., Private Property Rights Protection Act to:

- Change the timeframe under which a claimant must notify the government before filing an action from 150 days to 90 days;
- Allow the claimant to have the court, rather than a jury, determine damages;
- Remove the prohibition that the factfinder cannot consider business damages in making a determination of the claimant's damages; and
- Change the process for attorney fees and costs by:
  - Allowing a prevailing claimant to recover attorney fees and costs incurred from the time he or she files notice with the government instead of from the time he or she files suit; and
  - Removing the provision allowing a government to recover attorney fees and costs.

The bill provides that when a property owner submits a claim under the Bert Harris Act based on a regulation or ordinance applied to more than one residential parcel, and the case settles or the property owner obtains a judgment declaring an inordinate burden, there is a presumption that similarly situated residential parcels are also inordinately burdened and entitled to equivalent settlement terms or a judicial determination of an inordinate burden. This presumption is rebuttable by clear and convincing evidence, and similarly situated parcels are evaluated on a parcel-by-parcel basis.

The similarly situated residential property owner must submit the specified appraisal at least 120 days before a trial on the merits of the damages portion of the proceedings. The government is encouraged to negotiate settlement terms consistent with settlement agreements for similarly situated residential parcels during the 90-day notice period. Under the bill, settlement offers are presumed to protect the public interest.

The bill also provides that if the government does not provide notice by mail to the property owner when a law or regulation affects the property, the one-year timeframe for filing suit does not apply and the property owner may, at any time, notify the government in writing that the law or regulation restricts property usage. Within 45 days of receiving the notice, the government must respond in writing, clarifying whether the law or regulation applies to the owner's property, and if so, to what extent. If the government's response indicates the law or regulation is applicable and imposes new limitations, the owner may file suit immediately without having to go through the normal application process for a development order, development permit, or building permit, as doing so would be futile and a waste of

<sup>36</sup> S. 337.25(1)(a), F.S.

<sup>37</sup> S. 337.25(4), F.S.

<sup>38</sup> *Id.*

resources. The owner must file suit within one year of receiving the response from the government stating that limitations apply to the property.

#### Unconstitutional Exaction Challenges Under s. 70.45, F.S.

With respect to an action challenging an unlawful exaction, the bill clarifies that the property owner may sue as soon as he or she must comply with the exaction or condition of approval. This means that under certain circumstances the property owner no longer has to wait to sue until the government gives written notice of the exaction.

#### Florida Land Use and Environmental Dispute Resolution Act

The bill makes several changes to the Florida Land Use and Environmental Dispute Resolution Act (Act), codified at s. 70.51, F.S., including:

- Broadening the types of disputes between a landowner and a government that are covered by the Act, thus allowing for cost-effective dispute resolution in more cases.
- Clarifying that the special magistrate is not required to be a certified mediator.
- Requiring that mediation adhere to certain provisions within chapter 44, F.S.
- Allowing the special magistrate to determine whether a request for relief is complete and timely.
- Updating the Act's timeframes and procedures for tolling of timeframes.
- Updating other provisions within the Act, including providing that certain filings may be made by e-mail.
- Awarding attorney fees and costs to a landowner who successfully sues to require the government to participate in dispute resolution under the Act.
- Allowing the special magistrate, when determining whether the government action is unreasonable or unfair, to consider whether the government attempted to resolve the dispute in good faith.
- Providing procedures for a government to reconsider a prior decision after the special magistrate issues his or her recommendation, and to resolve disputes through the public meeting process.
- Clarifying that the Act does not limit a landowner's applicable judicial and administrative remedies.
- Clarifying that the special magistrate's recommendation may be considered in a subsequent proceeding but does not preclude any issue or defense in a subsequent proceeding.

The bill also amends s. 163.3181, F.S., to provide that if a local government denies a landowner's request for an amendment to a comprehensive plan, the landowner may proceed under the Act.

#### Conveyance of Property by Department of Transportation

The bill provides that before the department disposes of property under s. 337.25, F.S., it must offer a written right of first refusal to the previous property owner at the department's current estimate of property value, except when:

- The property was donated to the state for transportation purposes, and:
  - The facility has not been constructed for at least 5 years;
  - Plans have not been prepared; and
  - The property is not located in a transportation corridor.
- The property was originally acquired specifically to provide replacement housing for persons displaced by transportation projects.

Under the bill, the right of first refusal must give the previous owner fifteen days to accept the offer. If the previous owner exercises the right of first refusal, he or she has sixty days to close on the property. If the previous owner does not exercise the right, the department may not offer new terms to a different buyer without first allowing the previous owner a chance to accept the new terms.

The bill provides an effective date of July 1, 2020.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 70.001, F.S., relating to private property rights protection.

**Section 2:** Amends s. 70.45, F.S., relating to governmental exactions.

**Section 3:** Amends s. 70.51, F.S., relating to land use and environmental dispute resolution.

**Section 4:** Amends s. 163.3181, F.S., relating to public participation in the comprehensive planning process; intent; alternative dispute resolution.

**Section 5:** Amends s. 337.25, F.S., relating to acquisition, lease, and disposal of real and personal property.

**Section 6:** Provides an effective date of July 1, 2020.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on local governments by:

- Making it easier for a private property owner to challenge a local government regulation that burdens the property.
- Requiring a local government, when it makes a settlement offer to a property owner, to treat all other similarly situated residential properties within the political subdivision similarly.
- Allowing a jury or the court to consider business damages in making its calculation to determine a property owner's damages.
- Removing the right of a government to seek attorney fees and costs when a property owner unreasonably refuses a bona fide offer to settle a property claim.
- Requiring a court to award a landowner attorney fees and costs in certain situations under the Land Use and Environmental Dispute Resolution Act.
- Requiring the Department of Transportation, in certain situations, to offer a previous property owner a right of first refusal.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill streamlines and simplifies the process for a private property owner to sue the government for enacting a regulation that burdens private property rights. The bill also allows the jury or the court, in an action for damages, to consider business damages. The bill broadens the types of disputes that may be resolved under the informal process within s. 70.51, F.S. These provisions may have an indeterminate positive impact on the private sector.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 16, 2020, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Broadened the types of disputes between a landowner and a government that are covered by the Land Use and Environmental Dispute Resolution Act (Act).
- Updated and modified the Act's procedures.
- Added a provision allowing a landowner to recover attorney fees and costs if a government refuses to mediate under the Act.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.



26 proceedings; revising provisions concerning tolling of  
 27 certain administrative proceedings; revising the time  
 28 periods for a governmental entity to respond to a  
 29 request for relief; requiring mediations to be  
 30 conducted according to specified provisions; requiring  
 31 the governmental entity's conduct in dispute  
 32 resolution to be considered in determining whether  
 33 regulatory efforts were unreasonable or unfairly  
 34 burdened use of the property; revising the deadline  
 35 for a magistrate to prepare and file a written  
 36 recommendation; revising provisions concerning  
 37 settlement agreements; specifying that a governmental  
 38 entity has authority to rehear and reconsider certain  
 39 actions pursuant to a special magistrate's  
 40 recommendation; providing requirements for such  
 41 rehearing and reconsideration; revising provisions  
 42 concerning other remedies that may be pursued by a  
 43 property owner; providing requirements for guidelines  
 44 adopted by governmental entities for dispute  
 45 resolution proceedings; specifying that certain  
 46 settlement discussions are confidential; requiring  
 47 that actions on proposed settlements be taken at open  
 48 meetings; deleting obsolete language; amending s.  
 49 163.3181, F.S.; conforming provisions to changes made  
 50 by the act; amending s. 337.25, F.S.; requiring the

51 Department of Transportation to afford a right of  
 52 first refusal to the previous property owner before  
 53 disposing of property in certain circumstances;  
 54 providing an effective date.

55

56 Be It Enacted by the Legislature of the State of Florida:

57

58 Section 1. Subsections (1), (4), (5), (6), and (11) of  
 59 section 70.001, Florida Statutes, are amended to read:

60 70.001 Private property rights protection.—

61 (1) This act may be cited as the "Bert J. Harris, Jr.,  
 62 Private Property Rights Protection Act." The Legislature  
 63 recognizes that some laws, regulations, and ordinances of the  
 64 state and political entities in the state, as applied, may  
 65 inordinately burden, restrict, or limit private property rights  
 66 without amounting to a taking under the State Constitution or  
 67 the United States Constitution. The Legislature determines that  
 68 there is an important state interest in protecting the interests  
 69 of private property owners from such inordinate burdens. The  
 70 Legislature further recognizes that it is in the public interest  
 71 to ensure that all similarly situated residential properties are  
 72 subject to the same rules and regulations. Therefore, it is the  
 73 intent of the Legislature that, as a separate and distinct cause  
 74 of action from the law of takings, the Legislature herein  
 75 provides for relief, or payment of compensation, when a new law,

76 rule, regulation, or ordinance of the state or a political  
 77 entity in the state, as applied, unfairly affects real property.

78 (4) (a) Not less than 90 ~~150~~ days before ~~prior to~~ filing an  
 79 action under this section against a governmental entity, a  
 80 property owner who seeks compensation under this section must  
 81 present the claim in writing to the head of the governmental  
 82 entity, ~~except that if the property is classified as~~  
 83 ~~agricultural pursuant to s. 193.461, the notice period is 90~~  
 84 ~~days.~~ The property owner must submit, along with the claim, a  
 85 bona fide, valid appraisal that supports the claim and  
 86 demonstrates the loss in fair market value to the real property.  
 87 If the action of government is the culmination of a process that  
 88 involves more than one governmental entity, or if a complete  
 89 resolution of all relevant issues, in the view of the property  
 90 owner or in the view of a governmental entity to whom a claim is  
 91 presented, requires the active participation of more than one  
 92 governmental entity, the property owner shall present the claim  
 93 as provided in this section to each of the governmental  
 94 entities.

95 (b) The governmental entity shall provide written notice  
 96 of the claim to all parties to any administrative action that  
 97 gave rise to the claim, and to owners of real property  
 98 contiguous to the owner's property at the addresses listed on  
 99 the most recent county tax rolls. Within 15 days after the claim  
 100 is presented, the governmental entity shall report the claim in

101 writing to the Department of Legal Affairs, and shall provide  
 102 the department with the name, address, and telephone number of  
 103 the employee of the governmental entity from whom additional  
 104 information may be obtained about the claim during the pendency  
 105 of the claim and any subsequent judicial action.

106 (c) During the 90-day-notice period ~~or the 150-day-notice~~  
 107 ~~period~~, unless extended by agreement of the parties, the  
 108 governmental entity shall make a written settlement offer to  
 109 effectuate:

110 1. An adjustment of land development or permit standards  
 111 or other provisions controlling the development or use of land.

112 2. Increases or modifications in the density, intensity,  
 113 or use of areas of development.

114 3. The transfer of developmental rights.

115 4. Land swaps or exchanges.

116 5. Mitigation, including payments in lieu of onsite  
 117 mitigation.

118 6. Location on the least sensitive portion of the  
 119 property.

120 7. Conditioning the amount of development or use  
 121 permitted.

122 8. A requirement that issues be addressed on a more  
 123 comprehensive basis than a single proposed use or development.

124 9. Issuance of the development order, a variance, a  
 125 special exception, or any other extraordinary relief.

126           10. Purchase of the real property, or an interest therein,  
 127 by an appropriate governmental entity or payment of  
 128 compensation.

129           11. No changes to the action of the governmental entity.

130

131 If the property owner accepts a settlement offer, ~~either~~ before  
 132 or after filing an action, the governmental entity may implement  
 133 the settlement offer by appropriate development agreement; by  
 134 issuing a variance, a special exception, or any other  
 135 extraordinary relief; or by any other appropriate method,  
 136 subject to paragraph (d).

137           (d)1. When a governmental entity enters into a settlement  
 138 agreement under this section which would have the effect of a  
 139 modification, variance, or ~~a~~ special exception to the  
 140 application of a rule, regulation, or ordinance as it would  
 141 otherwise apply to the subject real property, the relief granted  
 142 shall protect the public interest served by the regulations at  
 143 issue and be the appropriate relief necessary to prevent the  
 144 governmental regulatory effort from inordinately burdening the  
 145 real property. Settlement offers made pursuant to paragraph (c)  
 146 shall be presumed to protect the public interest.

147           2. When a governmental entity enters into a settlement  
 148 agreement under this section which would have the effect of  
 149 contravening the application of a statute as it would otherwise  
 150 apply to the subject real property, the governmental entity and

151 the property owner shall jointly file an action in the circuit  
 152 court where the real property is located for approval of the  
 153 settlement agreement by the court to ensure that the relief  
 154 granted protects the public interest served by the statute at  
 155 issue and is the appropriate relief necessary to prevent the  
 156 governmental regulatory effort from inordinately burdening the  
 157 real property.

158 3. When a residential property owner submits a claim under  
 159 this section which is based on a governmental entity's  
 160 application of a regulation or ordinance to more than one  
 161 residential parcel, and the governmental entity reaches a  
 162 settlement of such claim or the property owner secures a  
 163 judgment declaring an inordinate burden under paragraph (6) (a),  
 164 there shall be a presumption, rebuttable only by clear and  
 165 convincing evidence, that similarly situated residential  
 166 parcels, as evaluated on a parcel-by-parcel basis, have been  
 167 inordinately burdened and are entitled to equivalent terms of  
 168 settlement or a judicial determination of an inordinate burden.  
 169 In such cases, the similarly situated residential property  
 170 owners must submit the appraisal specified in paragraph (a) not  
 171 less than 120 days before a trial on the merits of the damages  
 172 portion of the proceedings pursuant to paragraph (6) (b). During  
 173 the 90-day-notice period of such claims, the governmental entity  
 174 is encouraged to negotiate terms of settlement consistent with  
 175 settlement agreements for similarly situated residential

176 parcels.

177

178 This paragraph applies to any settlement reached between a  
 179 property owner and a governmental entity regardless of when the  
 180 settlement agreement was entered so long as the agreement fully  
 181 resolves all claims asserted under this section.

182 (5) (a) During the 90-day-notice period ~~or the 150-day-~~  
 183 ~~notice period~~, unless a settlement offer is accepted by the  
 184 property owner, each of the governmental entities provided  
 185 notice pursuant to subsection (4) ~~paragraph (4) (a)~~ shall issue a  
 186 written statement of allowable uses identifying the allowable  
 187 uses to which the subject property may be put. The failure of  
 188 the governmental entity to issue a statement of allowable uses  
 189 during the ~~applicable~~ 90-day-notice period ~~or 150-day notice~~  
 190 ~~period~~ shall be deemed a denial for purposes of allowing a  
 191 property owner to file an action in the circuit court under this  
 192 section. If a written statement of allowable uses is issued, it  
 193 constitutes the last prerequisite to judicial review for the  
 194 purposes of the judicial proceeding created by this section,  
 195 notwithstanding the availability of other administrative  
 196 remedies.

197 (b) If the property owner rejects the settlement offer and  
 198 the statement of allowable uses of the governmental entity or  
 199 entities, the property owner may file a claim for compensation  
 200 in the circuit court, a copy of which shall be served

201 contemporaneously on the head of each of the governmental  
 202 entities that made a settlement offer and a statement of  
 203 allowable uses that was rejected by the property owner. Actions  
 204 under this section shall be brought only in the county where the  
 205 real property is located.

206 (6) (a) The circuit court shall determine whether an  
 207 existing use of the real property or a vested right to a  
 208 specific use of the real property existed and, if so, whether,  
 209 considering the settlement offer and statement of allowable  
 210 uses, the governmental entity or entities have inordinately  
 211 burdened the real property. If the actions of more than one  
 212 governmental entity, considering any settlement offers and  
 213 statement of allowable uses, are responsible for the action that  
 214 imposed the inordinate burden on the real property of the  
 215 property owner, the court shall determine the percentage of  
 216 responsibility each such governmental entity bears with respect  
 217 to the inordinate burden. A governmental entity may take an  
 218 interlocutory appeal of the court's determination that the  
 219 action of the governmental entity has resulted in an inordinate  
 220 burden. An interlocutory appeal does not automatically stay the  
 221 proceedings; however, the court may stay the proceedings during  
 222 the pendency of the interlocutory appeal. If the governmental  
 223 entity does not prevail in the interlocutory appeal, the court  
 224 shall award to the prevailing property owner the costs and a  
 225 reasonable attorney fee incurred by the property owner in the

226 interlocutory appeal.

227 (b) Following its determination of the percentage of  
 228 responsibility of each governmental entity, and following the  
 229 resolution of any interlocutory appeal, the court shall impanel  
 230 a jury to determine the total amount of compensation to the  
 231 property owner for the loss in value due to the inordinate  
 232 burden to the real property. The property owner retains the  
 233 option to forego a jury and elect to have the court determine  
 234 the award of compensation. The award of compensation shall be  
 235 determined by calculating the difference in the fair market  
 236 value of the real property, as it existed at the time of the  
 237 governmental action at issue, as though the owner had the  
 238 ability to attain the reasonable investment-backed expectation  
 239 or was not left with uses that are unreasonable, whichever the  
 240 case may be, and the fair market value of the real property, as  
 241 it existed at the time of the governmental action at issue, as  
 242 inordinately burdened, considering the settlement offer together  
 243 with the statement of allowable uses, of the governmental entity  
 244 or entities. ~~In determining the award of compensation,~~  
 245 ~~consideration may not be given to business damages relative to~~  
 246 ~~any development, activity, or use that the action of the~~  
 247 ~~governmental entity or entities, considering the settlement~~  
 248 ~~offer together with the statement of allowable uses has~~  
 249 ~~restricted, limited, or prohibited.~~ The award of compensation  
 250 shall include a reasonable award of prejudgment interest from

251 the date the claim was presented to the governmental entity or  
 252 entities as provided in subsection (4).

253 (c)1. In any action filed pursuant to this section, the  
 254 property owner is entitled to recover reasonable costs and  
 255 attorney fees incurred by the property owner, from the  
 256 governmental entity or entities, according to their  
 257 proportionate share as determined by the court, from the date of  
 258 the claim with the governmental entity pursuant to paragraph  
 259 (4) (a) filing of the circuit court action, if the property owner  
 260 prevails in the action ~~and the court determines that the~~  
 261 ~~settlement offer, including the statement of allowable uses, of~~  
 262 ~~the governmental entity or entities did not constitute a bona~~  
 263 ~~fide offer to the property owner which reasonably would have~~  
 264 ~~resolved the claim, based upon the knowledge available to the~~  
 265 ~~governmental entity or entities and the property owner during~~  
 266 ~~the 90-day notice period or the 150-day notice period.~~

267 ~~2. In any action filed pursuant to this section, the~~  
 268 ~~governmental entity or entities are entitled to recover~~  
 269 ~~reasonable costs and attorney fees incurred by the governmental~~  
 270 ~~entity or entities from the date of the filing of the circuit~~  
 271 ~~court action, if the governmental entity or entities prevail in~~  
 272 ~~the action and the court determines that the property owner did~~  
 273 ~~not accept a bona fide settlement offer, including the statement~~  
 274 ~~of allowable uses, which reasonably would have resolved the~~  
 275 ~~claim fairly to the property owner if the settlement offer had~~

276 ~~been accepted by the property owner, based upon the knowledge~~  
 277 ~~available to the governmental entity or entities and the~~  
 278 ~~property owner during the 90-day notice period or the 150-day~~  
 279 ~~notice period.~~

280 2.3. The determination of total reasonable costs and  
 281 attorney fees pursuant to this paragraph shall be made by the  
 282 court and not by the jury. Any proposed settlement offer or any  
 283 proposed decision, except for the final written settlement offer  
 284 or the final written statement of allowable uses, and any  
 285 negotiations or rejections in regard to the formulation either  
 286 of the settlement offer or the statement of allowable uses, are  
 287 inadmissible in the subsequent proceeding established by this  
 288 section except for the purposes of the determination pursuant to  
 289 this paragraph.

290 (d) Within 15 days after the execution of any settlement  
 291 pursuant to this section, or the issuance of any judgment  
 292 pursuant to this section, the governmental entity shall provide  
 293 a copy of the settlement or judgment to the Department of Legal  
 294 Affairs.

295 (11) A cause of action may not be commenced under this  
 296 section if the claim is presented more than 1 year after a law  
 297 or regulation is first applied by the governmental entity to the  
 298 property at issue.

299 (a) For purposes of determining when this 1-year claim  
 300 period accrues:

301           1.a. A law or regulation is first applied upon enactment  
 302 and notice as provided for in this ~~sub-subparagraph~~ ~~subparagraph~~  
 303 if the impact of the law or regulation on the real property is  
 304 clear and unequivocal in its terms and notice is provided by  
 305 mail to the affected property owner or registered agent at the  
 306 address referenced in the jurisdiction's most current ad valorem  
 307 tax records. The fact that the law or regulation could be  
 308 modified, varied, or altered under any other process or  
 309 procedure does not preclude the impact of the law or regulation  
 310 on a property from being clear or unequivocal pursuant to this  
 311 ~~sub-subparagraph~~ ~~subparagraph~~. Any notice under this ~~sub-~~  
 312 ~~subparagraph~~ ~~subparagraph~~ shall be provided after the enactment  
 313 of the law or regulation and shall inform the property owner or  
 314 registered agent that the law or regulation may impact the  
 315 property owner's existing property rights and that the property  
 316 owner may have only 1 year from receipt of the notice to pursue  
 317 any rights established under this section.

318           b. If the notice required in sub-subparagraph a. is not  
 319 provided to the property owner, the property owner may at any  
 320 time after enactment notify the governmental entity in writing  
 321 that the property owner deems the impact of the law or  
 322 regulation on the property owner's real property to be clear and  
 323 unequivocal in its terms and, as such, restrictive of uses  
 324 allowed on the property before the enactment. Within 45 days  
 325 after receipt of a notice under this sub-subparagraph, the

326 governmental entity in receipt of the notice must respond in  
 327 writing to state whether the law or regulation is applicable to  
 328 the real property in question and provide a description of the  
 329 limitations imposed on the property by the law or regulation. If  
 330 the governmental entity concludes that the law or regulation is  
 331 applicable by imposing new limitations on the uses of the  
 332 property, the property owner is not required to formally pursue  
 333 an application for a development order, development permit, or  
 334 building permit as such will be deemed a waste of resources and  
 335 shall not be a prerequisite to bringing a claim pursuant to  
 336 paragraph (4) (a). However, any such claim must be filed within 1  
 337 year after the date of the property owner's receipt of the  
 338 notice from the governmental entity of the limitations on use  
 339 imposed on the real property.

340 2. Otherwise, the law or regulation is first applied to  
 341 the property when there is a formal denial of a written request  
 342 for development or variance.

343 Section 2. Paragraphs (c) through (e) of subsection (1) of  
 344 section 70.45, Florida Statutes, are redesignated as paragraphs  
 345 (d) through (f), respectively, a new paragraph (c) is added to  
 346 that subsection, and subsections (2), (4), and (5) of that  
 347 section are amended, to read:

348 70.45 Governmental exactions.—

349 (1) As used in this section, the term:

350 (c) "Imposed" or "imposition" as it relates to a

351 prohibited exaction or condition of approval refers to the time  
 352 at which the property owner must comply with the prohibited  
 353 exaction or condition of approval.

354 (2) In addition to other remedies available in law or  
 355 equity, a property owner may bring an action in a court of  
 356 competent jurisdiction under this section to declare a  
 357 prohibited exaction invalid and recover damages caused by a  
 358 prohibited exaction. Such action may not be brought until a  
 359 prohibited exaction is actually imposed or required in writing  
 360 as a final condition of approval for the requested use of real  
 361 property. The right to bring an action under this section may  
 362 not be waived. This section does not apply to impact fees  
 363 adopted under s. 163.31801 or non-ad valorem assessments as  
 364 defined in s. 197.3632.

365 (4) For each claim filed under this section, the  
 366 governmental entity has the burden of proving that the  
 367 challenged exaction has an essential nexus to a legitimate  
 368 public purpose and is roughly proportionate to the impacts of  
 369 the proposed use that the governmental entity is seeking to  
 370 avoid, minimize, or mitigate. The property owner has the burden  
 371 of proving damages that result from a prohibited exaction.

372 (5) The court may award attorney fees and costs to the  
 373 prevailing party; however, if the court determines that the  
 374 challenged exaction which is the subject of the claim lacks an  
 375 essential nexus to a legitimate public purpose, the court shall

376 award attorney fees and costs to the property owner.

377 Section 3. Subsections (2), (3), and (4), paragraph (b) of  
 378 subsection (5), paragraphs (a), (b), and (c) of subsection (6),  
 379 subsections (8), (10), (11), (12), and (13), paragraph (a) of  
 380 subsection (15), paragraph (a) of subsection (16), and  
 381 subsections (17), (18), (19), (20), (21), (24), (25), (26),  
 382 (28), and (30) of section 70.51, Florida Statutes, are amended  
 383 to read:

384 70.51 Land use and environmental dispute resolution.—

385 (2) As used in this section, the term:

386 (a) "Comprehensive plan amendment" means a governmental  
 387 action subject to s. 163.3181(4).

388 ~~(b)(a)~~ "Development order" means any order, or notice of  
 389 proposed state or regional governmental agency action, which is  
 390 or will have the effect of granting, denying, or granting with  
 391 conditions an application for a development permit, and includes  
 392 the rezoning of a specific parcel. ~~Actions by the state or a~~  
 393 ~~local government on comprehensive plan amendments are not~~  
 394 ~~development orders.~~

395 ~~(c)(b)~~ "Development permit" means any building permit,  
 396 zoning permit, subdivision approval, certification, special  
 397 exception, variance, or any other similar action of local  
 398 government, as well as any permit authorized to be issued under  
 399 state law by state, regional, or local government which has the  
 400 effect of authorizing the development of real property

401 including, but not limited to, programs implementing chapters  
 402 125, 161, 163, 166, 187, 258, 372, 373, 378, 380, and 403.

403 (d) "Enforcement action" means any civil or administrative  
 404 action by a governmental entity intended to enforce any law,  
 405 ordinance, regulation, rule, or policy related to the  
 406 development or use of real property. The term includes, but is  
 407 not limited to, any action taken under chapter 162, such as a  
 408 notice of violation, order, or placement of a lien, or the  
 409 service of a notice of violation or an order to correct a  
 410 condition, or an equivalent action, by a state agency.

411 (e)~~(f)~~ "Governmental entity" includes an agency of the  
 412 state, a regional or a local government created by the State  
 413 Constitution or by general or special act, any county or  
 414 municipality, or any other entity that independently exercises  
 415 governmental authority. The term does not include the United  
 416 States or any of its agencies.

417 (f)~~(g)~~ "Land" or "real property" means land and includes  
 418 any appurtenances and improvements to the land, including any  
 419 other relevant real property in which the owner had a relevant  
 420 interest.

421 (g)~~(d)~~ "Owner" means a person with a legal or equitable  
 422 interest in real property who filed an application for a  
 423 development permit for the property at the state, regional, or  
 424 local level and who received a development order, who filed a  
 425 comprehensive plan amendment, or who holds legal title to or who

426 | has a legal or equitable interest in real property that is  
 427 | subject, or is otherwise a person subject to, to an enforcement  
 428 | action of a governmental entity.

429 |       ~~(h)(e)~~ "Proposed Use of the property" means the proposal  
 430 | filed by the owner to develop his or her real property or the  
 431 | actual use of the property giving rise to an enforcement action.

432 |       ~~(i)(e)~~ "Special magistrate" means a person selected by the  
 433 | parties to perform the duties prescribed in this section. The  
 434 | special magistrate must be a resident of the state and possess  
 435 | experience and expertise in mediation and at least one of the  
 436 | following disciplines and a working familiarity with the others:  
 437 | land use and environmental permitting, land planning, land  
 438 | economics, local and state government organization and powers,  
 439 | and the law governing the same. A special magistrate is not  
 440 | required to be a certified mediator.

441 |       (3) Any owner who believes that a development order,  
 442 | either separately or in conjunction with other development  
 443 | orders, a comprehensive plan amendment, or an enforcement action  
 444 | of a governmental entity~~7~~ is unreasonable or unfairly burdens  
 445 | the use of the owner's real property~~7~~ may apply within 30 days  
 446 | after receipt of the order or notice of the governmental action  
 447 | for relief under this section.

448 |       (4) To initiate a proceeding under this section, an owner  
 449 | must file a request for relief with the elected or appointed  
 450 | head of the governmental entity that issued the development

451 | order or orders, denied the comprehensive plan amendment, or  
 452 | ~~that~~ initiated the enforcement action. Filing may be by  
 453 | electronic mail to the official email address of the head of the  
 454 | governmental entity, by hand delivery to such person, or by  
 455 | United States mail to such person at his or her official  
 456 | address. Formal service of process is not required for such  
 457 | filing. The process shall be considered initiated as of the date  
 458 | the petition is filed with the head of the governmental entity  
 459 | pursuant to this subsection. The head of the governmental entity  
 460 | may not charge the owner for the request for relief and must  
 461 | forward the request for relief to the special magistrate who is  
 462 | mutually agreed upon by the owner and the governmental entity  
 463 | within 10 days after receipt of the request.

464 |         (5) The governmental entity with whom a request has been  
 465 | filed shall also serve a copy of the request for relief by  
 466 | United States mail or by hand delivery to:

467 |         (b) Any substantially affected party who submitted oral or  
 468 | written testimony, sworn or unsworn, of a substantive nature  
 469 | which stated with particularity objections to or support for any  
 470 | development order, comprehensive plan amendment, ~~at issue~~ or  
 471 | enforcement action at issue. Notice under this paragraph is  
 472 | required only if that party indicated a desire to receive notice  
 473 | of any subsequent special magistrate proceedings occurring on  
 474 | the development order, comprehensive plan amendment, or  
 475 | enforcement action. Each governmental entity must maintain in

476 its files relating to each particular development order,  
 477 comprehensive plan amendment, or enforcement action ~~orders~~ a  
 478 mailing list of persons who have presented oral or written  
 479 testimony and who have requested notice.

480 (6) The request for relief must contain:

481 (a) A brief statement of the owner's ~~proposed~~ use of the  
 482 property.

483 (b) A summary of the development order or comprehensive  
 484 plan amendment or a description of the enforcement action. A  
 485 copy of the development order or comprehensive plan amendment or  
 486 the documentation of an enforcement action at issue must be  
 487 attached to the request.

488 (c) A brief statement of the impact of the development  
 489 order, denial of the comprehensive plan amendment, or  
 490 enforcement action on the ability of the owner to achieve the  
 491 ~~proposed~~ use of the property.

492 (8) The special magistrate has the sole authority to  
 493 determine whether a request for relief is complete and was  
 494 timely filed and may conduct a hearing on whether the request  
 495 for relief should be dismissed for failing to include the  
 496 information required in subsection (6). If the special  
 497 magistrate dismisses the case, the special magistrate shall  
 498 allow the owner to amend the request and refile. Failure to file  
 499 an adequate amended request within the time specified shall  
 500 result in a dismissal with prejudice as to this proceeding. A

501 property owner who is successful in a suit to require a  
 502 governmental entity to participate in a proceeding under this  
 503 section shall be awarded attorney fees and costs.

504 (10)(a) Before initiating a special magistrate proceeding  
 505 to review a local development order, comprehensive plan  
 506 amendment, or local enforcement action, the owner must exhaust  
 507 all nonjudicial local government administrative appeals if the  
 508 appeals take no longer than 4 months. Once nonjudicial local  
 509 administrative appeals are exhausted and the development order, ,  
 510 comprehensive plan amendment, or enforcement action is final, or  
 511 within 4 months after issuance of the development order, denial  
 512 of the comprehensive plan amendment, or notice of the  
 513 enforcement action if the owner has pursued local administrative  
 514 appeals even if the appeals have not been concluded, the owner  
 515 may initiate a proceeding under this section. Initiation of a  
 516 proceeding tolls the rendition or effectiveness of the  
 517 development order, denial of the comprehensive plan amendment,  
 518 ~~time for seeking judicial review of a local government~~  
 519 ~~development order~~ or enforcement action until the special  
 520 magistrate's recommendation is acted upon by the local  
 521 government. Election by the owner to file for judicial review of  
 522 a local government development order, comprehensive plan  
 523 amendment, or enforcement action before ~~prior to~~ initiating a  
 524 proceeding under this section waives any right to a special  
 525 magistrate proceeding.

526 (b) If an owner requests special magistrate relief from a  
 527 development order, comprehensive plan amendment, or enforcement  
 528 action issued by a state or regional agency, the time for  
 529 challenging agency action under ss. 120.569 and 120.57 is tolled  
 530 until the agency acts upon the recommendation of the special  
 531 magistrate or the proceeding is terminated by the owner. If an  
 532 owner chooses to bring a proceeding under ss. 120.569 and 120.57  
 533 before initiating a special magistrate proceeding, then the  
 534 owner waives any right to a special magistrate proceeding unless  
 535 all parties consent to proceeding to mediation.

536 (11) The initial party to the proceeding is the  
 537 governmental entity that issues the development order or  
 538 comprehensive plan amendment to the owner or that is taking the  
 539 enforcement action. In those instances when the development  
 540 order, comprehensive plan amendment, or enforcement action is  
 541 the culmination of a process involving more than one  
 542 governmental entity or when a complete resolution of all  
 543 relevant issues would require the active participation of more  
 544 than one governmental entity, the special magistrate may, upon  
 545 application of a party, join those governmental entities as  
 546 parties to the proceeding if it will assist in effecting the  
 547 purposes of this section, and those governmental entities so  
 548 joined shall actively participate in the procedure.

549 (12) Within 21 days after the date of notice provided  
 550 under subsection (5) ~~receipt of the request for relief~~, any

551 owner of land contiguous to the owner's property and any  
 552 substantially affected person who submitted oral or written  
 553 testimony, sworn or unsworn, of a substantive nature which  
 554 stated with particularity objections to or support for the  
 555 development order, comprehensive plan amendment, or enforcement  
 556 action at issue may make a written request to participate in the  
 557 hearing by transmitting such request to the official who signed  
 558 the notice ~~proceeding~~. Those persons may be permitted to  
 559 participate in the hearing but shall not be granted party or  
 560 intervenor status. The participation of such persons is limited  
 561 to addressing issues raised regarding alternatives, variances,  
 562 and other types of adjustment to the development order,   
 563 comprehensive plan amendment, or enforcement action which may  
 564 impact their substantial interests, including denial of the  
 565 development order or comprehensive plan amendment or application  
 566 of an enforcement action.

567 (13) Each party must make efforts to assure that those  
 568 persons qualified by training or experience necessary to address  
 569 issues raised by the request or by the special magistrate and  
 570 further qualified to address alternatives, variances, and other  
 571 types of modifications to the development order, comprehensive  
 572 plan amendment, or enforcement action are present at the  
 573 hearing.

574 (15) (a) The special magistrate shall hold a hearing within  
 575 60 ~~45~~ days after his or her receipt of the request for relief

576 unless a different date is agreed to by all the parties. The  
 577 hearing must be held in the county in which the property is  
 578 located.

579 (16)(a) Five days after the date on which the special  
 580 magistrate is selected, or 21 days after the date on which the  
 581 petition is served ~~Fifteen days following the filing of a~~  
 582 ~~request for relief, whichever is earlier,~~ the governmental  
 583 entity that issued the development order or comprehensive plan  
 584 amendment or that is taking the enforcement action shall file a  
 585 response to the request for relief with the special magistrate  
 586 together with a copy to the owner. The response must set forth  
 587 in reasonable detail the position of the governmental entity  
 588 regarding the matters alleged by the owner. The response must  
 589 include a brief statement explaining the public purpose of the  
 590 regulations on which the development order, comprehensive plan  
 591 amendment, or enforcement action is based.

592 (17) In all respects, the hearing must be informal and  
 593 open to the public and does not require the use of an attorney.  
 594 The hearing must operate at the direction and under the  
 595 supervision of the special magistrate. The object of the hearing  
 596 is to focus attention on the impact of the governmental action  
 597 giving rise to the request for relief and to explore  
 598 alternatives to the development order, comprehensive plan  
 599 amendment, or enforcement action and other regulatory efforts by  
 600 the governmental entities in order to recommend relief, when

601 appropriate, to the owner.

602 (a) The first responsibility of the special magistrate is  
 603 to facilitate a resolution of the conflict between the owner and  
 604 governmental entities to the end that some modification of the  
 605 owner's ~~proposed~~ use of the property or adjustment in the  
 606 development order, comprehensive plan amendment, or enforcement  
 607 action or regulatory efforts by one or more of the governmental  
 608 parties may be reached. Accordingly, the special magistrate  
 609 shall act as a facilitator or mediator between the parties in an  
 610 effort to effect a mutually acceptable solution. The parties  
 611 shall be represented at the mediation by persons with authority  
 612 to bind their respective parties to a solution, or by persons  
 613 with authority to recommend a solution directly to the persons  
 614 with authority to bind their respective parties to a solution.  
 615 The mediation shall be conducted according to ss. 44.401-44.406.

616 (b) If an acceptable solution is not reached by the  
 617 parties after the special magistrate's attempt at mediation, the  
 618 special magistrate shall consider the facts and circumstances  
 619 set forth in the request for relief and any responses and any  
 620 other information produced at the hearing in order to determine  
 621 whether the action by the governmental entity or entities is  
 622 unreasonable or unfairly burdens the real property.

623 (c) In conducting the hearing, the special magistrate may  
 624 hear from all parties and witnesses that are necessary to an  
 625 understanding of the matter. The special magistrate shall weigh

626 all information offered at the hearing.

627 (18) The circumstances to be examined in determining  
 628 whether the development order, comprehensive plan amendment, or  
 629 enforcement action, or the development order, comprehensive plan  
 630 amendment, or enforcement action in conjunction with regulatory  
 631 efforts of other governmental parties, is unreasonable or  
 632 unfairly burdens use of the property may include, but are not  
 633 limited to:

634 (a) The history of the real property, including when it  
 635 was purchased, how much was purchased, where it is located, the  
 636 nature of the title, the composition of the property, and how it  
 637 was initially used.

638 (b) The history or development and use of the real  
 639 property, including what was developed on the property and by  
 640 whom, if it was subdivided and how and to whom it was sold,  
 641 whether plats were filed or recorded, and whether infrastructure  
 642 and other public services or improvements may have been  
 643 dedicated to the public.

644 (c) The history of environmental protection and land use  
 645 controls and other regulations, including how and when the land  
 646 was classified, how use was proscribed, and what changes in  
 647 classifications occurred.

648 (d) The present nature and extent of the real property,  
 649 including its natural and altered characteristics.

650 (e) The reasonable expectations of the owner at the time

651 of acquisition, or immediately before ~~prior to~~ the  
 652 implementation of the regulation at issue, whichever is later,  
 653 under the regulations then in effect and under common law.

654 (f) The public purpose sought to be achieved by the  
 655 development order, comprehensive plan amendment, or enforcement  
 656 action, including the nature and magnitude of the problem  
 657 addressed by the underlying regulations on which the development  
 658 order, comprehensive plan amendment, or enforcement action is  
 659 based; whether the development order, comprehensive plan  
 660 amendment, or enforcement action is necessary to the achievement  
 661 of the public purpose; and whether there are alternative  
 662 development orders, comprehensive plan amendments, or  
 663 enforcement action conditions that would achieve the public  
 664 purpose and allow for reduced restrictions on the use of the  
 665 property.

666 (g) Uses authorized for and restrictions placed on similar  
 667 property.

668 (h) Whether the governmental entity attempted to resolve  
 669 the dispute in good faith, including, but not limited to,  
 670 adhering to the deadlines provided in this section.

671 ~~(i)-(h)~~ Any other information determined relevant by the  
 672 special magistrate.

673 (19) Within 14 days after the conclusion of the hearing,  
 674 or when the parties propose a settlement agreement for entry by  
 675 the special magistrate pursuant to subsection (22), the special

676 magistrate shall prepare and file with all parties a written  
 677 recommendation.

678 (a) If the special magistrate finds and concludes that the  
 679 development order at issue, or the development order,  
 680 comprehensive plan amendment, or enforcement action in  
 681 combination with the actions or regulations of other  
 682 governmental entities, is not unreasonable or does not unfairly  
 683 burden the use of the owner's property, the special magistrate  
 684 must recommend that the development order, comprehensive plan  
 685 amendment, or enforcement action remain undisturbed and the  
 686 proceeding shall end, subject to the owner's retention of all  
 687 other available remedies.

688 (b) If the special magistrate finds and concludes that the  
 689 development order, comprehensive plan amendment, or enforcement  
 690 action, or the development order, comprehensive plan amendment,  
 691 or enforcement action in combination with the actions or  
 692 regulations of other governmental entities, is unreasonable or  
 693 unfairly burdens use of the owner's property, the special  
 694 magistrate, with the owner's consent to proceed, may recommend  
 695 one or more alternatives that protect the public interest served  
 696 by the development order, comprehensive plan amendment, or  
 697 enforcement action and regulations at issue but allow for  
 698 reduced restraints on the use of the owner's real property,  
 699 including, but not limited to:

- 700 1. An adjustment of land development or permit standards

701 or other provisions controlling the development or use of land.

702 2. Increases or modifications in the density, intensity,  
703 or use of areas of development.

704 3. The transfer of development rights.

705 4. Land swaps or exchanges.

706 5. Mitigation, including payments in lieu of onsite  
707 mitigation.

708 6. Location on the least sensitive portion of the  
709 property.

710 7. Conditioning the amount of development or use  
711 permitted.

712 8. A requirement that issues be addressed on a more  
713 comprehensive basis than a single ~~proposed~~ use or development.

714 9. Rehearing or reconsideration and issuance of the  
715 development order, comprehensive plan amendment, or enforcement  
716 action with or without modifications or additional stipulations,  
717 or a variance, special exception, or other extraordinary relief,  
718 including withdrawal of the enforcement action.

719 10. Purchase of the real property, or an interest therein,  
720 by an appropriate governmental entity.

721 (c) If the parties reach a proposed settlement agreement  
722 at any time before the special magistrate enters a  
723 recommendation, which agreement may remain subject to approval  
724 by the governmental entity, the parties may request that the  
725 special magistrate transmit the settlement agreement to the

726 governmental entity as the special magistrate's findings and  
 727 recommendation for consideration and approval by the  
 728 governmental entity, and the special magistrate need not include  
 729 the findings or conclusions set forth in paragraph (a) or  
 730 paragraph (b) ~~This subsection does not prohibit the owner and~~  
 731 ~~governmental entity from entering into an agreement as to the~~  
 732 ~~permissible use of the property prior to the special magistrate~~  
 733 ~~entering a recommendation. An agreement for a permissible use~~  
 734 ~~must be incorporated in the special magistrate's recommendation.~~

735 (d) This section provides legislative authority for the  
 736 governmental entity or tribunal to rehear and reconsider its  
 737 prior action on a development order, comprehensive plan  
 738 amendment, or enforcement action pursuant to, and in  
 739 consideration of, a special magistrate's recommendation  
 740 regardless of whether existing statutes, rules, ordinances, or  
 741 regulations provide for such a procedure. Any such rehearing or  
 742 reconsideration shall be at a public hearing noticed and  
 743 otherwise conducted in the same manner as the original hearing.  
 744 The tribunal shall treat the special magistrate's findings, or a  
 745 settlement agreement, as evidence for modification of its prior  
 746 development order, comprehensive plan amendment, or enforcement  
 747 action, and shall provide an opportunity for any person who  
 748 participated in the original hearing or the special magistrate's  
 749 proceeding to provide additional evidence and testimony. The  
 750 tribunal's action on the special magistrate's recommendation

751 shall then become the final order on the development order,  
 752 comprehensive plan amendment, or enforcement action.

753 (20) The special magistrate's recommendation and findings  
 754 are ~~is~~ a public record under chapter 119. However, actions or  
 755 statements of all participants to the special magistrate  
 756 mediation proceeding are evidence of an offer to compromise and  
 757 inadmissible in any proceeding, judicial or administrative.

758 (21) Within 45 days after receipt of the special  
 759 magistrate's recommendation, the governmental entity responsible  
 760 for the development order, comprehensive plan amendment, or  
 761 enforcement action and other governmental entities participating  
 762 in the proceeding must consult among themselves and each  
 763 governmental entity must:

764 (a) Accept or modify the recommendation of the special  
 765 magistrate, including any proposed settlement agreement, as  
 766 submitted and proceed to implement it by development agreement,  
 767 when appropriate, by rehearing or reconsidering the development  
 768 order or enforcement action, or by other method, in the ordinary  
 769 course and consistent with the rules and procedures of that  
 770 governmental entity. However, the decision of the governmental  
 771 entity to accept the recommendation of the special magistrate  
 772 with respect to rehearing or reconsidering the prior development  
 773 order or enforcement action or granting a modification,  
 774 variance, or special exception to the application of statutes,  
 775 rules, regulations, or ordinances as they would otherwise apply

776 to the subject property does not require an owner to duplicate  
 777 previous processes in which the owner has participated in order  
 778 to effectuate the granting of the modification, variance, or  
 779 special exception;

780 ~~(b) Modify the recommendation as submitted by the special~~  
 781 ~~magistrate and proceed to implement it by development agreement,~~  
 782 ~~when appropriate, or by other method, in the ordinary course and~~  
 783 ~~consistent with the rules and procedures of that governmental~~  
 784 ~~entity; or~~

785 ~~(b)(e)~~ Reject the recommendation as submitted by the  
 786 special magistrate. Failure to act within 45 days is a rejection  
 787 unless the period is extended by agreement of the owner and  
 788 issuer of the development order, comprehensive plan amendment,  
 789 or enforcement action.

790 (24) The procedure created by this section is not itself,  
 791 nor does it create, a judicial cause of action. Once the  
 792 governmental entity acts on the special magistrate's  
 793 recommendation, the owner may pursue whatever administrative or  
 794 judicial remedies are applicable ~~elect to file suit in a court~~  
 795 ~~of competent jurisdiction~~. Invoking the procedures of this  
 796 section is not a condition precedent to filing a civil action.

797 (25) Regardless of the action the governmental entity  
 798 takes on the special magistrate's findings and recommendation, a  
 799 recommendation that the development order, comprehensive plan  
 800 amendment, or enforcement action, or the development order,

801 comprehensive plan amendment, or enforcement action in  
802 combination with other governmental regulatory actions, is  
803 unreasonable or unfairly burdens use of the owner's real  
804 property may serve as an indication of sufficient hardship to  
805 support waivers of or modification, variances, or special  
806 exceptions to the application of statutes, rules, regulations,  
807 or ordinances to the subject property, whether as a part of the  
808 implementation of the recommendation, in a subsequent  
809 application, or in an administrative or judicial challenge to  
810 the action of the governmental entity. However, the special  
811 magistrate's findings and recommendations are not preclusive to  
812 any issue or defense in any subsequent administrative or  
813 judicial proceeding.

814 (26) A special magistrate's findings and recommendation  
815 under this section constitutes data in support of, and a support  
816 document for, a comprehensive plan or comprehensive plan  
817 amendment, but is not, in and of itself, dispositive of a  
818 determination of compliance with chapter 163.

819 (28) Each governmental entity may establish procedural  
820 guidelines to govern the conduct of proceedings authorized by  
821 this section, which must include, but are not limited to,  
822 payment of special magistrate fees and expenses, including the  
823 costs of providing notice and effecting service of the request  
824 for relief under this section, which shall be borne equally by  
825 the governmental entities and the owner. Such guidelines may not

826 modify the requirements and relief provided by this section in  
 827 any way.

828 (30) In order to encourage the resolution of disputes, and  
 829 regardless of whether the parties are engaged in pending  
 830 litigation presently before a court or administrative agency, a  
 831 governmental entity may conduct meetings following the  
 832 procedures in s. 286.011(8) at any time after the governmental  
 833 entity responds in writing to a request for relief to discuss  
 834 settlement strategies, but shall not take action on a proposed  
 835 settlement agreement except at a noticed public meeting ~~This~~  
 836 ~~section applies only to development orders issued, modified, or~~  
 837 ~~amended, or to enforcement actions issued, on or after October~~  
 838 ~~1, 1995.~~

839 Section 4. Subsection (4) of section 163.3181, Florida  
 840 Statutes, is amended to read:

841 163.3181 Public participation in the comprehensive  
 842 planning process; intent; alternative dispute resolution.-

843 (4) If a local government denies an owner's request for an  
 844 amendment to the comprehensive plan which is applicable to the  
 845 property of the owner, the owner may initiate a dispute  
 846 resolution proceeding under s. 70.51 ~~the local government must~~  
 847 ~~afford an opportunity to the owner for informal mediation or~~  
 848 ~~other alternative dispute resolution. The costs of the mediation~~  
 849 ~~or other alternative dispute resolution shall be borne equally~~  
 850 ~~by the local government and the owner. If the owner requests~~

851 ~~mediation, the time for bringing a judicial action is tolled~~  
 852 ~~until the completion of the mediation or 120 days, whichever is~~  
 853 ~~earlier.~~

854 Section 5. Subsection (4) of section 337.25, Florida  
 855 Statutes, is amended to read:

856 337.25 Acquisition, lease, and disposal of real and  
 857 personal property.—

858 (4) The department may convey, in the name of the state,  
 859 any land, building, or other property, real or personal, which  
 860 was acquired under subsection (1) and which the department has  
 861 determined is not needed for the construction, operation, and  
 862 maintenance of a transportation facility. When such a  
 863 determination has been made, property may be disposed of through  
 864 negotiations, sealed competitive bids, auctions, or any other  
 865 means the department deems to be in its best interest, with due  
 866 advertisement for property valued by the department at greater  
 867 than \$10,000. A sale may not occur at a price less than the  
 868 department's current estimate of value, except as provided in  
 869 paragraphs (a)-(d). The department may afford a right of first  
 870 refusal to the local government or other political subdivision  
 871 in the jurisdiction in which the parcel is situated, except in a  
 872 conveyance transacted under paragraph (a), paragraph (c), or  
 873 paragraph (e). Notwithstanding any provision of this section to  
 874 the contrary, before any conveyance under this subsection may be  
 875 made, except a conveyance under paragraph (a) or paragraph (c),

876 the department shall first afford a right of first refusal to  
 877 the previous property owner for the department's current  
 878 estimate of value of the property. The right of first refusal  
 879 shall be made in writing and sent to the previous owner via  
 880 certified mail or hand delivery, effective upon receipt. The  
 881 right of first refusal shall provide the previous owner with a  
 882 minimum of 15 days to exercise the right in writing and sent to  
 883 the originator of the offer via certified mail or hand delivery,  
 884 effective upon dispatch. The previous owner shall have a minimum  
 885 of 60 days after exercising its right of first refusal to close.  
 886 If the previous owner does not exercise its right of first  
 887 refusal, the department may not deviate in any material respect  
 888 from the offer made to the previous owner unless it first  
 889 provides the previous owner with the right of first refusal  
 890 under the new terms. The same procedure shall apply to any  
 891 subsequent iterations of the sale terms.

892 (a) If the property has been donated to the state for  
 893 transportation purposes and a transportation facility has not  
 894 been constructed for at least 5 years, plans have not been  
 895 prepared for the construction of such facility, and the property  
 896 is not located in a transportation corridor, the governmental  
 897 entity may authorize reconveyance of the donated property for no  
 898 consideration to the original donor or the donor's heirs,  
 899 successors, assigns, or representatives.

900 (b) If the property is to be used for a public purpose,

901 the property may be conveyed without consideration to a  
 902 governmental entity.

903 (c) If the property was originally acquired specifically  
 904 to provide replacement housing for persons displaced by  
 905 transportation projects, the department may negotiate for the  
 906 sale of such property as replacement housing. As compensation,  
 907 the state shall receive at least its investment in such property  
 908 or the department's current estimate of value, whichever is  
 909 lower. It is expressly intended that this benefit be extended  
 910 only to persons actually displaced by the project. Dispositions  
 911 to any other person must be for at least the department's  
 912 current estimate of value.

913 (d) If the department determines that the property  
 914 requires significant costs to be incurred or that continued  
 915 ownership of the property exposes the department to significant  
 916 liability risks, the department may use the projected  
 917 maintenance costs over the next 10 years to offset the  
 918 property's value in establishing a value for disposal of the  
 919 property, even if that value is zero.

920 (e) If, at the discretion of the department, a sale to a  
 921 person other than an abutting property owner would be  
 922 inequitable, the property may be sold to the abutting owner for  
 923 the department's current estimate of value.

924 Section 6. This act shall take effect July 1, 2020.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 799 Pub. Rec./Trade Secrets  
**SPONSOR(S):** Gregory  
**TIED BILLS:** HB 801 **IDEN./SIM. BILLS:** SB 1532

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Villa	Smith
2) Commerce Committee		Willson <i>MW</i>	Hamon <i>K.W.H.</i>
3) State Affairs Committee			

### SUMMARY ANALYSIS

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt from public record requirements. Some exemptions only protect trade secrets, while others protect "proprietary business information" and define that term to specifically include trade secrets. Some exemptions also provide a specific process that an agency must use when protecting trade secret information under the exemption.

House Bill 801 (2020), which this bill is linked to, repeals most public record exemptions for trade secrets in current law, all associated processes for designating a trade secret, and most references to trade secrets contained in definitions for proprietary business information.

This bill creates a public record exemption for trade secrets that applies to most agencies that are subject to public record requirements.

The bill defines the term "trade secret" and specifically excludes from the definition certain information related to any contract or agreement, or an addendum thereto, with an agency. Such information includes the parties to the contract or agreement; the amount of money paid, any payment structure or plan, expenditures, incentives, bonuses, fees, or penalties; the nature or type of commodities or services purchased; and applicable contract unit prices and deliverables.

The bill requires a person who submits a record claimed to contain a trade secret to an agency to mark the record clearly with the words "trade secret" and to submit with the record a notice verifying, under penalty of perjury, that the record contains a trade secret.

The bill provides for repeal of the exemption on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the Florida Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution.<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption<sup>2</sup> and must be no more broad than necessary to accomplish its purpose.<sup>3</sup>

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>4</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:<sup>5</sup>

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup> Specified questions must be considered by the Legislature during the review process.<sup>7</sup>

###### Trade Secrets

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt<sup>8</sup> from public record requirements. Some exemptions only protect trade secrets, while others protect "proprietary business information" and define that term to specifically include trade secrets.

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<sup>1</sup> Art. I, s. 24(c), FLA. CONST.

<sup>2</sup> This portion of a public record exemption is commonly referred to as a "public necessity statement."

<sup>3</sup> Art. I, s. 24(c), FLA. CONST.

<sup>4</sup> Section 119.15, F.S.

<sup>5</sup> Section 119.15(6)(b), F.S.

<sup>6</sup> Section 119.15(3), F.S.

<sup>7</sup> Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>8</sup> 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).

The following are examples of public record exemptions for trade secrets:

- Section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is a trade secret;
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency;
- Section 288.1226(9), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation;
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt;
- Section 334.049(4), F.S., makes certain trade secret information obtained by the Department of Transportation as a result of research and development projects confidential and exempt;
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt;
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., makes trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt;
- Section 440.108(2), F.S., makes trade secrets contained in records held by the Department of Financial Services relating to workers' compensation employer compliance investigations confidential and exempt;
- Section 499.012(3)(c), F.S., makes trade secret information provided to the Department of Business and Professional Regulation in a prescription drug permit application confidential and exempt;
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt;
- Section 526.311(2), F.S., makes trade secrets contained in investigative records related to the sale of liquid fuel and brake fuel obtained by DACS confidential and exempt;
- Section 560.129(2), F.S., makes information obtained by the Office of Financial Regulation in the course of an investigation of a money service business that is a trade secret confidential and exempt;
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS' Division of Fruit and Vegetables confidential and exempt;
- Section 601.10(8)(b), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt;
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt;
- Section 626.884(2), F.S., makes information contained in insurance administrators' records obtained by the Office of Insurance Regulation confidential and exempt; and
- Section 815.04(3), F.S., makes trade secret information that is held by an agency and exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

While some of these exemptions do not define the term "trade secret," a majority of them rely on one of two different statutory definitions of the term. Some of the exemptions define the term in accordance with Florida's criminal statutes, which define the term as follows:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art,

and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.<sup>9</sup>

Other exemptions define the term in accordance with the Uniform Trade Secrets Act,<sup>10</sup> which defines the term as follows:

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) 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
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>11</sup>

In addition, some exemptions provide a specific process that an agency<sup>12</sup> must use when protecting trade secret information under the exemption. For instance, some exemptions require the party that submits information claimed to be a trade secret to designate the information as protected, and some exemptions require the agency to determine whether information claimed to be a trade secret constitutes a trade secret.<sup>13</sup>

#### House Bill 801 (2020)

House Bill 801 (2020), which this bill is linked to, repeals most public record exemptions for trade secrets in current law, all associated processes for designating a trade secret, and most references to trade secrets contained in definitions for proprietary business information.

#### **Effect of the Bill**

The bill, which is linked to the passage of HB 801 (2020) or similar legislation, creates a public record exemption for trade secrets that applies to most agencies that are subject to public record requirements.

The bill defines the term “trade secret” to have the same meaning as the definition currently codified in the Uniform Trade Secrets Act, which includes information that is 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

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<sup>9</sup> Section 812.081(1)(c), F.S.

<sup>10</sup> Sections 688.001 through 688.009, F.S.

<sup>11</sup> Section 688.002(4), F.S.

<sup>12</sup> The term “agency” is defined to mean 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 chapter 119, F.S., 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. Section 119.011(2), F.S.

<sup>13</sup> See s. 381.83, F.S.

- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

However, the bill specifically excludes from the definition the following information related to any contract or agreement, or an addendum thereto, with an agency:

- The parties to the contract or agreement, or an addendum thereto.
- The amount of money paid, any payment structure or plan, expenditures, incentives, bonuses, fees, or penalties.
- The nature or type of commodities or services purchased.
- Applicable contract unit prices and deliverables.

The bill requires a person who submits a record claimed to contain a trade secret to an agency to mark the record clearly with the words "trade secret" and to submit with the record a notice verifying that the record contains a trade secret. Verification occurs by signing a written declaration under penalty of perjury. Failure to submit the notice constitutes a waiver of any claim by the submitter that the record contains a trade secret.

The bill authorizes an agency to disclose a trade secret, together with the notice of trade secret, to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities.

The bill specifies that an agency employee who, while acting in good faith and in the performance of his or her duties, releases records pursuant to the process created by the bill is not liable, civilly or criminally, for release of the records.

The bill also specifies that the public record exemption does not apply to research institutes created or established in law, divisions of sponsored research at state universities, or technology transfer centers at Florida College System institutions.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that the public record exemption is necessary to protect trade secret information provided to an agency by an individual or business because disclosure of such information to competitors of those businesses would be detrimental to the business. In addition, the exemption is necessary to protect trade secret information created by an agency in furtherance of the agency's duties and responsibilities, and disclosure of such information would be detrimental to the effective and efficient operation of the agency.

The bill provides for repeal of the exemption on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

#### B. SECTION DIRECTORY:

Section 1 creates s. 688.01, F.S., relating to a trade secret exemption from inspecting or copying public records.

Section 2 amends s. 688.001, F.S., relating to a short title.

Section 3 amends s. 688.006, F.S., relating to preservation of secrecy.

Section 4 provides a public necessity statement.

Section 5 provides an effective date of the same date that HB 801 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have an impact on state government revenues.

#### 2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have an impact on local government revenues.

#### 2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to 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, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

##### Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

##### Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for trade secrets held by an agency. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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 at the time such  
 41 records are submitted to the agency. Failure to do so  
 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 must verify to the agency through a written  
 52 declaration in the manner provided in s. 92.525 the following:  
 53

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

59 [...I have/my company has...] taken measures to prevent the  
 60 disclosure of the record or specific portion of a record claimed  
 61 to be a trade secret to anyone other than those who have been  
 62 selected to have access for limited purposes, and [...I  
 63 intend/my company intends...] to continue to take such 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) AGENCY ACCESS.--An agency may disclose a trade secret,  
 72 together with the notice of trade secret, to an officer or  
 73 employee of another agency or governmental entity whose use of  
 74 the trade secret is within the scope of his or her lawful duties

75 and responsibilities.

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

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

84 (7) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject  
 85 to the Open Government Sunset Review Act in accordance with s.  
 86 119.15 and shall stand repealed on October 2, 2025, unless  
 87 reviewed and saved from repeal through reenactment by the  
 88 Legislature.

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

91 688.001 Short title.—Sections 688.001-688.01 ~~Sections~~  
 92 ~~688.001-688.009~~ may be cited as the "Uniform Trade Secrets Act."

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

95 688.006 Preservation of secrecy.—In an action under ss.  
 96 688.001-688.01 ~~ss. 688.001-688.009~~, a court shall preserve the  
 97 secrecy of an alleged trade secret by reasonable means, which  
 98 may include granting protective orders in connection with  
 99 discovery proceedings, holding in camera hearings, sealing the

100 records of the action, and ordering any person involved in the  
 101 litigation not to disclose an alleged trade secret without prior  
 102 court approval.

103       Section 4. The Legislature finds that it is a public  
 104 necessity that trade secrets held by an agency be made  
 105 confidential and exempt from s. 119.07(1), Florida Statutes, and  
 106 s. 24(a), Article I of the State Constitution. The Legislature  
 107 recognizes that an agency may create trade secret information in  
 108 furtherance of the agency's duties and responsibilities and that  
 109 disclosure of such information would be detrimental to the  
 110 effective and efficient operation of the agency. If such trade  
 111 secret information were made available to the public, the agency  
 112 could suffer great economic harm. In addition, the Legislature  
 113 recognizes that in many instances, individuals and businesses  
 114 provide trade secret information for regulatory or other  
 115 purposes to an agency and that disclosure of such information to  
 116 competitors of those businesses would be detrimental to the  
 117 businesses. Without the public record exemption, those entities  
 118 would hesitate to cooperate with an agency, which would impair  
 119 the effective and efficient administration of governmental  
 120 functions. As such, the Legislature's intent is to protect trade  
 121 secret information of a confidential nature that includes a  
 122 formula, pattern, compilation, program, device, method,  
 123 technique, or process used that derives independent economic  
 124 value, actual or potential, from not being generally known to,

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

132       Section 5. This act shall take effect on the same date  
133 that HB 801 or similar legislation takes effect, if such  
134 legislation is adopted in the same legislative session or an  
135 extension thereof and becomes a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 801 Public Records  
**SPONSOR(S):** Oversight, Transparency & Public Management Subcommittee, Gregory  
**TIED BILLS:** HB 799 **IDEN./SIM. BILLS:** SB 1534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N, As CS	Villa	Smith
2) Commerce Committee		Willson <i>MW</i>	Hamon <i>R.W.H.</i>
3) State Affairs Committee			

### SUMMARY ANALYSIS

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt from public record requirements. Some exemptions only protect trade secrets, while others protect "proprietary business information" and define that term to specifically include trade secrets. While some of the exemptions do not define the term "trade secret," a majority of them rely on one of two different statutory definitions: the definition contained in Florida's criminal law statutes or the definition in the Uniform Trade Secrets Act. Some exemptions also provide a specific process that an agency must use when protecting trade secret information under the exemption.

House Bill 799 (2020), which this bill is linked to, creates a uniform public record exemption for trade secrets that applies to most agencies that are subject to public record requirements. That bill defines the term "trade secret" and creates a process for an individual or entity to follow when submitting a trade secret to an agency.

This bill repeals most public record exemptions for trade secrets in current law, all associated processes for designating a trade secret, and most references to trade secrets contained in definitions for proprietary business information.

The bill repeals s. 815.045, F.S., which is a public necessity statement for a trade secret exemption that was inadvertently codified in the Florida Statutes.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution.<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption<sup>2</sup> and must be no more broad than necessary to accomplish its purpose.<sup>3</sup>

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>4</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:<sup>5</sup>

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.

Florida's Second District Court of Appeal has held that an amendment eliminating a public record exemption applies prospectively from the effective date of the amendment.<sup>6</sup> Further, s. 119.15(7), F.S., provides that records created before the date of the repeal of an exemption may not be made public unless otherwise provided by law.

###### Trade Secrets

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt<sup>7</sup> from public record requirements. Some exemptions only protect trade secrets, while others protect "proprietary business information" and define that term to specifically include trade secrets.

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<sup>3</sup> Art. I, s. 24(c), FLA. CONST.

<sup>4</sup> Section 119.15, F.S.

<sup>5</sup> Section 119.15(6)(b), F.S.

<sup>6</sup> *Baker v. Eckerd Corporation*, 697 So. 2d 970 (Fla. 2d DCA 1997).

<sup>7</sup> 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).

The following are examples of public record exemptions for trade secrets:

- Section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is a trade secret;
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency;
- Section 288.1226(9), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation;
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt;
- Section 334.049(4), F.S., makes certain trade secret information obtained by the Department of Transportation as a result of research and development projects confidential and exempt;
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt;
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., makes trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt;
- Section 440.108(2), F.S., makes trade secrets contained in records held by the Department of Financial Services relating to workers' compensation employer compliance investigations confidential and exempt;
- Section 499.012(3)(c), F.S., makes trade secret information provided to the Department of Business and Professional Regulation in a prescription drug permit application confidential and exempt;
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt;
- Section 526.311(2), F.S., makes trade secrets contained in investigative records related to the sale of liquid fuel and brake fuel obtained by DACS confidential and exempt;
- Section 560.129(2), F.S., makes information obtained by the Office of Financial Regulation in the course of an investigation of a money service business that is a trade secret confidential and exempt;
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS' Division of Fruit and Vegetables confidential and exempt;
- Section 601.10(8)(b), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt;
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt;
- Section 626.884(2), F.S., makes information contained in insurance administrators' records obtained by the Office of Insurance Regulation confidential and exempt; and
- Section 815.04(3), F.S., makes trade secret information that is held by an agency and exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

While some of these exemptions do not define the term "trade secret," a majority of them rely on one of two different statutory definitions of the term. Some of the exemptions define the term in accordance with Florida's criminal statutes, which define the term as follows:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.<sup>8</sup>

Other exemptions define the term in accordance with the Uniform Trade Secrets Act,<sup>9</sup> which defines the term as follows:

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) 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
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>10</sup>

In addition, some exemptions provide a specific process that an agency<sup>11</sup> must use when protecting trade secret information under the exemption. For instance, some exemptions require the party that submits information claimed to be a trade secret to designate the information as protected, and some exemptions require the agency to determine whether information claimed to be a trade secret constitutes a trade secret.<sup>12</sup>

Section 815.045, F.S., contains the statement of public necessity<sup>13</sup> for a public record exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in chapter 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device. In *SePRO Corporation v. Florida Department of Environmental Protection*,<sup>14</sup> the public necessity statement was interpreted by a district court to be a public record exemption. This interpretation had the result of extending protection to certain information that had been filed with an agency.

#### House Bill 799 (2020)

House Bill 799 (2020), which this bill is linked to, creates a uniform public record exemption for trade secrets that applies to most agencies that are subject to public record requirements. The bill defines the term “trade secret” and creates a process for an individual or entity to follow when submitting a trade secret to an agency.

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<sup>8</sup> Section 812.081(1)(c), F.S.

<sup>9</sup> Sections 688.001 through 688.009, F.S.

<sup>10</sup> Section 688.002(4), F.S.

<sup>11</sup> The term “agency” is defined to mean 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 chapter 119, F.S., 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. Section 119.011(2), F.S.

<sup>12</sup> See s. 381.83, F.S.

<sup>13</sup> Section 815.045, F.S., which begins “[t]he Legislature finds that it is a public necessity that trade secret information as defined in s. 812.081, and as provided for in s. 815.04(3), be expressly made confidential and exempt” is the required public necessity statement for s. 815.04(3), F.S., and it was inadvertently codified in the Florida Statutes. Public necessity statements are codified in the Laws of Florida.

<sup>14</sup> See *SePRO Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

## **Effect of the Bill**

The bill, which is linked to the passage of HB 799 (2020) or similar legislation, repeals most public record exemptions for trade secrets in current law, all associated processes for designating a trade secret, and most references to trade secrets contained in definitions for proprietary business information.

The bill repeals s. 815.045, F.S., which is a public necessity statement for a trade secret exemption that was inadvertently codified in the Florida Statutes.

The bill specifies that trade secrets held by the H. Lee Moffitt Cancer Center and Research Institute, the Florida Institute for Human and Machine Cognition, Inc., and divisions of sponsored research at state universities are confidential and exempt if they meet the definition of "trade secret" in HB 799.

The bill also authorizes the Florida Office of Insurance Regulation (OIR) to make information reported to and collected by OIR available on an aggregate basis, even if marked trade secret pursuant to HB 799 (2020).

### **B. SECTION DIRECTORY:**

Section 1. amends s. 73.0155, F.S., deleting provisions relating to public records exemptions for trade secrets held by governmental condemning authorities.

Section 2. amends s. 119.071, F.S., deleting a provision declaring that certain data processing software exempt from public records requirements is considered a trade secret; removing the scheduled repeal of the public record exemption.

Section 3. amends s. 119.0713, F.S., deleting a provision exempting trade secrets held by local government agencies from public records requirements.

Section 4. amends s. 125.0104, F.S., deleting a provision exempting trade secrets held by county tourism development agencies from public records requirements.

Section 5. amends s. 163.01, F.S., deleting a provision exempting trade secrets held by public agencies that are electric utilities from public records requirements.

Section 6. amends s. 202.195, F.S., deleting a provision exempting trade secrets obtained from a telecommunications company or franchised cable company for certain purposes from public records requirements.

Section 7. amends s. 215.4401, F.S., deleting provisions relating to confidentiality of trade secrets held by the State Board of Administration.

Section 8. amends s. 252.88, F.S., deleting provisions exempting certain information from public records requirements under the Florida Emergency Planning Community Right-to-Know Act.

Section 9. repeals s. 252.943, F.S., relating to a public record exemption under the Florida Accidental Release Prevention and Risk Management Planning Act.

Section 10. amends s. 287.0943, F.S., deleting provisions relating to confidentiality of certain information relating to applications for certification of minority business enterprises.

Section 11. amends s. 288.047, F.S., deleting a provision exempting potential trade secrets from public records requirements.

Section 12. amends s. 288.075, F.S., deleting provisions relating to a public records exemption for trade secrets held by economic development agencies.

Section 13. amends s. 288.1226, F.S., deleting provisions relating to a public records exemption for trade secrets held by the Florida Tourism Industry Marketing Corporation.

Section 14. amends s. 288.776, F.S., deleting provisions relating to a public record exemption for trade secrets held by the Florida Export Finance Corporation.

Section 15. amends s. 288.9520, F.S., deleting provisions relating to a public record exemption for trade secrets and potential trade secrets held by Enterprise Florida, Inc., and related entities.

Section 16. amends s. 288.9607, F.S., deleting provisions relating to a public record exemption for trade secrets held by the Florida Development Finance Corporation.

Section 17. amends s. 288.9626, F.S., deleting provisions relating to a public record exemption for trade secret and potential trade secrets held by the Florida Opportunity Fund; conforming provisions to changes made by the act.

Section 18. amends s. 288.9627, F.S., deleting provisions relating to a public records exemption for trade secrets and potential trade secrets held by the Institute for Commercialization of Florida Technology; conforming provisions to changes made by the act.

Section 19. amends s. 331.326, F.S., deleting provisions relating to a public records exemption for trade secrets held by Space Florida; conforming a provision to changes made by the act.

Section 20. amends s. 334.049, F.S., deleting provisions relating to a public records exemption for trade secrets held by the Department of State.

Sections 21. and 22. amend ss. 350.121 and 364.183, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Florida Public Service Commission.

Section 23. amends s. 365.174, F.S., deleting provisions relating to public record exemptions for trade secrets held by the E911 Board and the Division of State Technology within the Department of Management Services.

Section 24., 25., and 26. amend ss. 366.093, 367.156, and 368.108, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Florida Public Service Commission.

Section 27. repeals s. 381.83, F.S., relating to confidentiality of certain information containing trade secrets obtained by the Department of Health.

Section 28. amends s. 395.3035, F.S., deleting provisions relating to a public record exemption for trade secrets of hospitals.

Section 29. amends s. 403.7046, F.S., revising provisions relating to a public record exemption for trade secrets contained in certain reports to the Department of Environmental Protection.

Section 30. repeals s. 403.73, F.S., relating to confidentiality of certain information containing trade secrets obtained by the Department of Environmental Protection.

Section 31. amends s. 408.061, F.S., deleting a requirement that certain trade secret information submitted to the Agency for Healthcare Administration be clearly designated as such.

Section 32. amends s. 408.185, F.S., deleting provisions relating to public record exemptions for certain trade secrets held by the Office of the Attorney General.

Section 33. amends s. 408.910, F.S., deleting provisions relating to public record exemptions for trade secrets held by Florida Health Choices, Inc. as part of the Florida Health Choices Program.

Section 34. amends s. 409.91196, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Agency for Healthcare Administration; conforming provisions to changes made by the act.

Section 35. amends s. 440.108, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Department of Financial Services.

Section 36. amends s. 494.00125, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Office of Financial Regulation.

Section 37. amends s. 497.172, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.

Section 38., 39., 40., and 41. amend ss. 499.012, 499.0121, 499.05, and 499.051, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Department of Business and Professional Regulation.

Section 42. repeals s. 499.931, F.S., relating to maintenance of information held by the Department of Business and Professional Regulation that is deemed to be a trade secret.

Section 43. amends s. 501.171, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Department of Legal Affairs.

Section 44. repeals s. 502.222, F.S., relating to trade secrets of a dairy business held by DACS.

Section 45. and 46. amend ss. 517.2015 and 520.9965, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Office of Financial Regulation.

Section 47. amends s. 526.311, F.S., deleting provisions relating to public record exemptions for trade secrets held by DACS.

Section 48. amends s. 548.062, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Florida State Boxing Commission.

Section 49. amends s. 556.113, F.S., deleting provisions relating to public record exemptions for trade secrets held by Sunshine State One-Call of Florida, Inc.

Section 50. amends s. 559.5558, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Office of Financial Regulation.

Section 51. amends s. 559.9285, F.S., revising provisions specifying that certain information provided to DACS does not constitute a trade secret.

Section 52. amends s. 560.129, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Office of Financial Regulation.

Section 53. amends s. 570.48, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Division of Fruit and Vegetables within DACS.

Section 54. amends s. 570.544, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Division of Consumer Services within DACS.

Section 55. amends s. 573.123, F.S., deleting provisions relating to public record exemptions for trade secrets held by DACS.

Section 56. repeals s. 581.199, F.S., relating to a prohibition on the use of trade secret information obtained under specified provisions for personal use or gain.

Sections 57., 58., and 59. amend ss. 601.10, 601.15, and 601.152, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Department of Citrus within DACS.

Section 60. amends s. 601.76, F.S., relating to a public record exemption for certain formulas filed with DACS.

Sections 61. and 62. amend ss. 607.0505 and 617.0503, F.S., deleting provisions relating to public record exemptions for certain information that might reveal trade secrets held by the Department of Legal Affairs.

Section 63. amends s. 624.307, F.S., authorizing the Florida Office of Insurance Regulation to report certain information on an aggregate basis.

Section 64. amends s. 624.315, F.S., authorizing the Florida Office of Insurance Regulation to make certain information available on an aggregate basis.

Section 65. amends s. 624.4212, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Florida Office of Insurance Regulation.

Section 66. repeals s. 624.4213, F.S., relating to trade secret documents submitted to the Department of Financial Services or the Florida Office of Insurance Regulation.

Sections 67. and 68. amend ss. 626.84195 and 626.884, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Florida Office of Insurance Regulation.

Section 69. amends s. 626.9936, F.S., revising provisions relating to a public record exemption for trade secrets held by the Florida Office of Insurance Regulation.

Section 70. amends s. 627.0628, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Florida Hurricane Loss Projection Methodology; conforming a provision to changes made by the act.

Section 71. amends s. 627.3518, F.S., deleting provisions relating to public record exemptions for trade secrets held by the Citizens Property Insurance Corporation.

Section 72. amends s. 655.057, F.S., deleting and revising provisions relating to a public record exemption for trade secrets held by the Office of Financial Regulation.

Section 73. repeals s. 655.0591, F.S., relating to trade secret documents held by the Office of Financial Regulation.

Section 74. amends s. 663.533, F.S., revising a cross-reference.

Section 75. repeals s. 721.071, F.S., relating to trade secret documents filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.

Section 76. amends s. 815.04, F.S., deleting a public record exemption for certain trade secret information relating to offenses against intellectual property.

Section 77. repeals s. 815.045, F.S., relating to trade secret information.

Section 78. amends s. 1004.22, F.S., revising provisions relating to public record exemptions for trade secrets and potential trade secrets received, generated, ascertained, or discovered during the course of research conducted within the state universities.

Section 79. amends s. 1004.30, F.S., revising provisions relating to public record exemptions for trade secrets held by state university health support organizations.

Section 80. amends s. 1004.43, F.S., revising provisions relating to public record exemptions for trade secrets and potential trade secrets held by the H. Lee Moffitt Cancer Center and Research Institute.

Section 81. amends s. 1004.4472, F.S., revising provisions relating to public record exemptions for trade secrets and potential trade secrets held by the Florida Institute for Human and Machine Cognition, Inc.

Section 82. amends s. 1004.78, F.S., deleting provisions relating to public record exemptions for trade secrets and potential trade secrets held by the technology transfer centers at Florida College System institutions.

Section 83. amends s. 601.80, F.S., correcting a cross-reference.

Sections 84., 85., and 86. amend ss. 663.533, 721.13, and 921.0022, F.S., conforming provisions to changes made by the act.

Section 87. provides an effective date of becoming a law if HB 799 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have an impact on state revenues.

#### **2. Expenditures:**

See Fiscal Comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have an impact on local government revenues.

#### **2. Expenditures:**

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the repeal of the public record exemptions or the change in the definition of the term "trade secret." The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to 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, nor reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create the need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 16, 2020, the Oversight, Transparency & Public Management Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment corrected a cross reference.

This analysis is drafted to the committee substitute as passed by the Oversight, Transparency & Public Management Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           73.0155, F.S.; deleting provisions relating to public  
 4           records exemptions for trade secrets held by  
 5           governmental condemning authorities; amending s.  
 6           119.071, F.S.; deleting a provision declaring that  
 7           certain data processing software exempt from public  
 8           records requirements is considered a trade secret;  
 9           removing the scheduled repeal of the public record  
 10          exemption; amending s. 119.0713, F.S.; deleting a  
 11          provision exempting trade secrets held by local  
 12          government agencies from public records requirements;  
 13          amending s. 125.0104, F.S.; deleting a provision  
 14          exempting trade secrets held by county tourism  
 15          development agencies from public records requirements;  
 16          amending s. 163.01, F.S.; deleting a provision  
 17          exempting trade secrets held by public agencies that  
 18          are electric utilities from public records  
 19          requirements; amending s. 202.195, F.S.; deleting a  
 20          provision exempting trade secrets obtained from a  
 21          telecommunications company or franchised cable company  
 22          for certain purposes from public records requirements;  
 23          amending s. 215.4401, F.S.; deleting provisions  
 24          relating to confidentiality of trade secrets held by  
 25          the State Board of Administration; amending s. 252.88,

26 F.S.; deleting provisions exempting certain  
 27 information from public records requirements under the  
 28 Florida Emergency Planning and Community Right-to-Know  
 29 Act; repealing s. 252.943, F.S., relating to a public  
 30 records exemption under the Florida Accidental Release  
 31 Prevention and Risk Management Planning Act; amending  
 32 s. 287.0943, F.S.; deleting provisions relating to  
 33 confidentiality of certain information relating to  
 34 applications for certification of minority business  
 35 enterprises; amending s. 288.047, F.S.; deleting  
 36 provisions exempting potential trade secrets from  
 37 public records requirements; amending s. 288.075,  
 38 F.S.; deleting provisions relating to a public records  
 39 exemption for trade secrets held by economic  
 40 development agencies; amending s. 288.1226, F.S.;  
 41 deleting provisions relating to a public records  
 42 exemption for trade secrets held by the Florida  
 43 Tourism Industry Marketing Corporation; amending s.  
 44 288.776, F.S.; deleting provisions relating to a  
 45 public records exemption for trade secrets held by the  
 46 Florida Export Finance Corporation; amending s.  
 47 288.9520, F.S.; deleting provisions relating to a  
 48 public records exemption for trade secrets and  
 49 potential trade secrets held by Enterprise Florida,  
 50 Inc., and related entities; amending s. 288.9607,

51 F.S.; deleting provisions relating to a public records  
 52 exemption for trade secrets held by the Florida  
 53 Development Finance Corporation; amending s. 288.9626,  
 54 F.S.; deleting provisions relating to a public records  
 55 exemption for trade secrets and potential trade  
 56 secrets held by the Florida Opportunity Fund;  
 57 conforming provisions to changes made by the act;  
 58 amending s. 288.9627, F.S.; deleting provisions  
 59 relating to a public records exemption for trade  
 60 secrets and potential trade secrets held by the  
 61 Institute for Commercialization of Florida Technology;  
 62 conforming provisions to changes made by the act;  
 63 amending s. 331.326, F.S.; deleting provisions  
 64 relating to a public records exemption for trade  
 65 secrets held by Space Florida; amending s. 334.049,  
 66 F.S.; deleting provisions relating to a public records  
 67 exemption for trade secrets held by the Department of  
 68 State; amending ss. 350.121 and 364.183, F.S.;;  
 69 deleting provisions relating to public records  
 70 exemptions for trade secrets held by the Florida  
 71 Public Service Commission; amending 365.174, F.S.;;  
 72 deleting provisions relating to public records  
 73 exemptions for trade secrets held by the E911 Board  
 74 and the Technology Program within the Department of  
 75 Management Services; amending ss. 366.093, 367.156,

76 and 368.108, F.S.; deleting provisions relating to  
 77 public records exemptions for trade secrets held by  
 78 the Florida Public Service Commission; repealing s.  
 79 381.83, F.S., relating to confidentiality of certain  
 80 information containing trade secrets obtained by the  
 81 Department of Health; amending s. 395.3035, F.S.;  
 82 deleting provisions relating to a public records  
 83 exemption for trade secrets of hospitals; amending s.  
 84 403.7046, F.S.; revising provisions relating to an  
 85 exemption for trade secrets contained in certain  
 86 reports to the Department of Environmental Protection;  
 87 repealing s. 403.73, F.S., relating to confidentiality  
 88 of certain information containing trade secrets  
 89 obtained by the Department of Environmental  
 90 Protection; amending s. 408.061, F.S.; deleting a  
 91 requirement that certain trade secret information  
 92 submitted to the Agency for Healthcare Administration  
 93 be clearly designated as such; amending s. 408.185,  
 94 F.S.; deleting provisions relating to public records  
 95 exemptions for certain trade secrets held by the  
 96 Office of the Attorney General; amending s. 408.910,  
 97 F.S.; deleting provisions relating to public records  
 98 exemptions for trade secrets held by the Florida  
 99 Health Choices Program; amending s. 409.91196, F.S.;  
 100 deleting provisions relating to public records

101 exemptions for trade secrets held by the Agency for  
 102 Healthcare Administration; amending s. 440.108, F.S.;

103 deleting provisions relating to public records  
 104 exemptions for trade secrets held by the Department of  
 105 Financial Services; amending s. 494.00125, F.S.;

106 deleting provisions relating to public records  
 107 exemptions for trade secrets held by the Office of  
 108 Financial Regulation; amending s. 497.172, F.S.;

109 deleting provisions relating to public records  
 110 exemptions for trade secrets held by the Department of  
 111 Financial Services or the Board of Funeral, Cemetery,  
 112 and Consumer Services; amending ss. 499.012, 499.0121,  
 113 499.05, and 499.051, F.S.; deleting provisions  
 114 relating to public records exemptions for trade  
 115 secrets held by the Department of Business and  
 116 Professional Regulation; repealing s. 499.931, F.S.,  
 117 relating to maintenance of information held by the  
 118 Department of Business and Professional Regulation  
 119 that is deemed to be a trade secret; amending s.  
 120 501.171, F.S.; deleting provisions relating to public  
 121 records exemptions for trade secrets held by the  
 122 Department of Legal Affairs; repealing s. 502.222,  
 123 F.S., relating to trade secrets of a dairy business  
 124 held by the Department of Agriculture and Consumer  
 125 Services; amending ss. 517.2015 and 520.9965, F.S.;

126 deleting provisions relating to public records  
 127 exemptions for trade secrets held by the Office of  
 128 Financial Regulation; amending s. 526.311, F.S.;  
 129 deleting provisions relating to public records  
 130 exemptions for trade secrets held by the Department of  
 131 Agriculture and Consumer Services; amending s.  
 132 548.062, F.S.; deleting provisions relating to public  
 133 records exemptions for trade secrets held by the  
 134 Florida State Boxing Commission; amending s. 556.113,  
 135 F.S.; deleting provisions relating to public records  
 136 exemptions for trade secrets held by Sunshine State  
 137 One-Call of Florida, Inc.; amending s. 559.5558, F.S.;  
 138 deleting provisions relating to public records  
 139 exemptions for trade secrets held by the Office of  
 140 Financial Regulation; amending s. 559.9285, F.S.;  
 141 revising provisions specifying that certain  
 142 information provided to the Department of Agriculture  
 143 and Consumer Services does not constitute a trade  
 144 secret; amending s. 560.129, F.S.; deleting provisions  
 145 relating to public records exemptions for trade  
 146 secrets held by the Office of Financial Regulation;  
 147 amending s. 570.48, F.S.; deleting provisions relating  
 148 to public records exemptions for trade secrets held by  
 149 the Division of Fruit and Vegetables; amending ss.  
 150 570.544 and 573.123, F.S.; deleting provisions

151 relating to public records exemptions for trade  
 152 secrets held by the Division of Consumer Services;  
 153 repealing s. 581.199, F.S., relating to a prohibition  
 154 on the use of trade secret information obtained under  
 155 specified provisions for personal use or gain;  
 156 amending ss. 601.10, 601.15, and 601.152, F.S.;

157 deleting provisions relating to public records  
 158 exemptions for trade secrets held by the Department of  
 159 Citrus; amending s. 601.76, F.S.; deleting provisions  
 160 relating to a public records exemption for certain  
 161 formulas filed with the Department of Agriculture;  
 162 amending ss. 607.0505 and 617.0503, F.S.; deleting  
 163 provisions relating to public records exemptions for  
 164 certain information that might reveal trade secrets  
 165 held by the Department of Legal Affairs; amending s.  
 166 624.307, F.S.; authorizing the Office of Insurance  
 167 Regulation to report certain information on an  
 168 aggregate basis; amending s. 624.315, F.S.;

169 authorizing the Office of Insurance Regulation to make  
 170 certain information available on an aggregate basis;  
 171 amending s. 624.4212, F.S.; deleting provisions  
 172 relating to public records exemptions for trade  
 173 secrets held by the Office of Insurance Regulation;  
 174 revising a cross-reference; repealing s. 624.4213,  
 175 F.S., relating to trade secret documents submitted to

176 the Department of Financial Services or the Office of  
 177 Insurance Regulation; amending ss. 626.84195 and  
 178 626.884, F.S.; deleting provisions relating to public  
 179 records exemptions for trade secrets held by the  
 180 Office of Insurance Regulation; amending s. 626.9936,  
 181 F.S.; revising provisions relating to a public records  
 182 exemption for trade secrets held by the Office of  
 183 Insurance Regulation; amending ss. 627.0628 and  
 184 627.3518, F.S.; deleting provisions relating to public  
 185 records exemptions for trade secrets held by the  
 186 Department of Financial Services or the Office of  
 187 Insurance Regulation; amending s. 655.057, F.S.;  
 188 revising provisions relating to a public records  
 189 exemption for trade secrets held by the Office of  
 190 Financial Regulation; repealing s. 655.0591, F.S.,  
 191 relating to trade secret documents held by the Office  
 192 of Financial Regulation; amending s. 663.533, F.S.;  
 193 revising a cross-reference; repealing s. 721.071,  
 194 F.S., relating to trade secret material filed with the  
 195 Division of Florida Condominiums, Timeshares, and  
 196 Mobile Homes of the Department of Business and  
 197 Professional Regulation; amending s. 815.04, F.S.;  
 198 deleting a public records exemption for certain trade  
 199 secret information relating to offenses against  
 200 intellectual property; repealing s. 815.045, F.S.,

201 relating to trade secret information; amending s.  
 202 1004.22, F.S.; revising provisions relating to public  
 203 records exemptions for trade secrets and potential  
 204 trade secrets received, generated, ascertained, or  
 205 discovered during the course of research conducted  
 206 within the state universities; amending s. 1004.30,  
 207 F.S.; revising provisions relating to public records  
 208 exemptions for trade secrets held by state university  
 209 health support organizations; amending s. 1004.43,  
 210 F.S.; revising provisions relating to public records  
 211 exemptions for trade secrets and potential trade  
 212 secrets held by the H. Lee Moffitt Cancer Center and  
 213 Research Institute; amending s. 1004.4472, F.S.;;  
 214 revising provisions relating to public records  
 215 exemptions for trade secrets and potential trade  
 216 secrets held by the Florida Institute for Human and  
 217 Machine Cognition, Inc.; amending s. 1004.78, F.S.;;  
 218 revising provisions relating to public records  
 219 exemptions for trade secrets and potential trade  
 220 secrets held by the technology transfers centers at  
 221 Florida College System institutions; amending s.  
 222 601.80, F.S.; correcting a cross-reference; amending  
 223 ss. 663.533, 721.13, and 921.0022, F.S.; conforming  
 224 provisions to changes made by the act; providing a  
 225 contingent effective date.

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

Section 1. Paragraph (e) of subsection (1) of section 73.0155, Florida Statutes, is amended to read:

73.0155 Confidentiality; business information provided to a governmental condemning authority.—

(1) The following business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the owner requests in writing that the business information be held confidential and exempt:

(e) Materials that relate to methods of manufacture or production or, ~~potential trade secrets~~, patentable material, ~~or actual trade secrets as defined in s. 688.002.~~

Section 2. Paragraph (f) of subsection (1) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(1) AGENCY ADMINISTRATION.—

(f) ~~Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and~~ Agency-produced data processing software that is sensitive is

251 ~~are~~ exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 252 Constitution. The designation of agency-produced software as  
 253 sensitive does not prohibit an agency head from sharing or  
 254 exchanging such software with another public agency. ~~This~~  
 255 ~~paragraph is subject to the Open Government Sunset Review Act in~~  
 256 ~~accordance with s. 119.15 and shall stand repealed on October 2,~~  
 257 ~~2021, unless reviewed and saved from repeal through reenactment~~  
 258 ~~by the Legislature.~~

259 Section 3. Paragraph (a) of subsection (4) of section  
 260 119.0713, Florida Statutes, is amended to read:

261 119.0713 Local government agency exemptions from  
 262 inspection or copying of public records.—

263 (4)(a) Proprietary confidential business information means  
 264 information, regardless of form or characteristics, which is  
 265 held by an electric utility that is subject to this chapter, is  
 266 intended to be and is treated by the entity that provided the  
 267 information to the electric utility as private in that the  
 268 disclosure of the information would cause harm to the entity  
 269 providing the information or its business operations, and has  
 270 not been disclosed unless disclosed pursuant to a statutory  
 271 provision, an order of a court or administrative body, or a  
 272 private agreement that provides that the information will not be  
 273 released to the public. Proprietary confidential business  
 274 information includes:

275 ~~1. Trade secrets, as defined in s. 688.002.~~

276        1.2. Internal auditing controls and reports of internal  
277        auditors.

278        2.3. Security measures, systems, or procedures.

279        3.4. Information concerning bids or other contractual  
280        data, the disclosure of which would impair the efforts of the  
281        electric utility to contract for goods or services on favorable  
282        terms.

283        4.5. Information relating to competitive interests, the  
284        disclosure of which would impair the competitive business of the  
285        provider of the information.

286        Section 4. Paragraph (d) of subsection (9) of section  
287        125.0104, Florida Statutes, is amended to read:

288        125.0104 Tourist development tax; procedure for levying;  
289        authorized uses; referendum; enforcement.—

290        (9) COUNTY TOURISM PROMOTION AGENCIES.—In addition to any  
291        other powers and duties provided for agencies created for the  
292        purpose of tourism promotion by a county levying the tourist  
293        development tax, such agencies are authorized and empowered to:

294        (d) Undertake marketing research and advertising research  
295        studies and provide reservations services and convention and  
296        meetings booking services consistent with the authorized uses of  
297        revenue as set forth in subsection (5).

298        1. Information given to a county tourism promotion agency  
299        which, if released, would reveal the identity of persons or  
300        entities who provide data or other information as a response to

301 a sales promotion effort, an advertisement, or a research  
 302 project or whose names, addresses, meeting or convention plan  
 303 information or accommodations or other visitation needs become  
 304 booking or reservation list data, is exempt from s. 119.07(1)  
 305 and s. 24(a), Art. I of the State Constitution.

306 2. ~~The following information,~~ When held by a county  
 307 tourism promotion agency, booking business records, as defined  
 308 in s. 255.047, are ~~is~~ exempt from s. 119.07(1) and s. 24(a),  
 309 Art. I of the State Constitution.†

310 a. ~~Booking business records, as defined in s. 255.047.~~

311 b. ~~Trade secrets and commercial or financial information~~  
 312 ~~gathered from a person and privileged or confidential, as~~  
 313 ~~defined and interpreted under 5 U.S.C. s. 552(b)(4), or any~~  
 314 ~~amendments thereto.~~

315 3. ~~A trade secret, as defined in s. 812.081, held by a~~  
 316 ~~county tourism promotion agency is exempt from s. 119.07(1) and~~  
 317 ~~s. 24(a), Art. I of the State Constitution. This subparagraph is~~  
 318 ~~subject to the Open Government Sunset Review Act in accordance~~  
 319 ~~with s. 119.15 and shall stand repealed on October 2, 2021,~~  
 320 ~~unless reviewed and saved from repeal through reenactment by the~~  
 321 ~~Legislature.~~

322 Section 5. Paragraph (m) of subsection (15) of section  
 323 163.01, Florida Statutes, is amended to read:

324 163.01 Florida Interlocal Cooperation Act of 1969.—

325 (15) Notwithstanding any other provision of this section

326 or of any other law except s. 361.14, any public agency of this  
 327 state which is an electric utility, or any separate legal entity  
 328 created pursuant to the provisions of this section, the  
 329 membership of which consists only of electric utilities, and  
 330 which exercises or proposes to exercise the powers granted by  
 331 part II of chapter 361, the Joint Power Act, may exercise any or  
 332 all of the following powers:

333 (m) In the event that any public agency or any such legal  
 334 entity, or both, should receive, in connection with its joint  
 335 ownership or right to the services, output, capacity, or energy  
 336 of an electric project, as defined in paragraph (3)(d), any  
 337 material which is designated by the person supplying such  
 338 material as proprietary confidential business information or  
 339 which a court of competent jurisdiction has designated as  
 340 confidential or secret shall be kept confidential and shall be  
 341 exempt from the provisions of s. 119.07(1). As used in this  
 342 paragraph, "proprietary confidential business information"  
 343 ~~includes, but is not limited to, trade secrets,~~ internal  
 344 auditing controls and reports of internal auditors; security  
 345 measures, systems, or procedures; ~~information concerning bids or~~  
 346 ~~other contractual data, the disclosure of which would impair the~~  
 347 ~~efforts of the utility to contract for services on favorable~~  
 348 ~~terms,~~ employee personnel information unrelated to compensation,  
 349 duties, qualifications, or responsibilities; and formulas,  
 350 patterns, devices, combinations of devices, ~~contract costs,~~ or

351 other information the disclosure of which would injure the  
 352 affected entity in the marketplace.

353 Section 6. Subsection (2) of section 202.195, Florida  
 354 Statutes, is amended to read:

355 202.195 Proprietary confidential business information;  
 356 public records exemption.—

357 (2) For the purposes of this exemption, "proprietary  
 358 confidential business information" includes maps, plans, billing  
 359 and payment records, ~~trade secrets~~, or other information  
 360 relating to the provision of or facilities for communications  
 361 service:

362 (a) That is intended to be and is treated by the company  
 363 as confidential;

364 (b) The disclosure of which would be reasonably likely to  
 365 be used by a competitor to harm the business interests of the  
 366 company; and

367 (c) That is not otherwise readily ascertainable or  
 368 publicly available by proper means by other persons from another  
 369 source in the same configuration as requested by the local  
 370 governmental entity.

371

372 Proprietary confidential business information does not include  
 373 schematics indicating the location of facilities for a specific  
 374 site that are provided in the normal course of the local  
 375 governmental entity's permitting process.

376 Section 7. Paragraphs (a), (c), and (d) of subsection (3)  
 377 of section 215.4401, Florida Statutes, are amended to read:

378 215.4401 Board of Administration; public record  
 379 exemptions.-

380 (3)(a) As used in this subsection, the term:

381 1. "Alternative investment" means an investment by the  
 382 State Board of Administration in a private equity fund, venture  
 383 fund, hedge fund, or distress fund or a direct investment in a  
 384 portfolio company through an investment manager.

385 2. "Alternative investment vehicle" means the limited  
 386 partnership, limited liability company, or similar legal  
 387 structure or investment manager through which the State Board of  
 388 Administration invests in a portfolio company.

389 3. "Portfolio company" means a corporation or other  
 390 issuer, any of whose securities are owned by an alternative  
 391 investment vehicle or the State Board of Administration and any  
 392 subsidiary of such corporation or other issuer.

393 4. "Portfolio positions" means individual investments in  
 394 portfolio companies which are made by the alternative investment  
 395 vehicles, including information or specific investment terms  
 396 associated with any portfolio company investment.

397 5. "Proprietor" means an alternative investment vehicle, a  
 398 portfolio company in which the alternative investment vehicle is  
 399 invested, or an outside consultant, including the respective  
 400 authorized officers, employees, agents, or successors in

401 interest, which controls or owns information provided to the  
 402 State Board of Administration.

403         6. "Proprietary confidential business information" means  
 404 information that has been designated by the proprietor when  
 405 provided to the State Board of Administration as information  
 406 that is owned or controlled by a proprietor; that is intended to  
 407 be and is treated by the proprietor as private, the disclosure  
 408 of which would harm the business operations of the proprietor  
 409 and has not been intentionally disclosed by the proprietor  
 410 unless pursuant to a private agreement that provides that the  
 411 information will not be released to the public except as  
 412 required by law or legal process, or pursuant to law or an order  
 413 of a court or administrative body; and that concerns:

414         ~~a.~~ ~~Trade secrets as defined in s. 688.002.~~

415         a.b. Information provided to the State Board of  
 416 Administration regarding a prospective investment in a private  
 417 equity fund, venture fund, hedge fund, distress fund, or  
 418 portfolio company which is proprietary to the provider of the  
 419 information.

420         ~~b.e.~~ Financial statements and auditor reports of an  
 421 alternative investment vehicle.

422         ~~c.d.~~ Meeting materials of an alternative investment  
 423 vehicle relating to financial, operating, or marketing  
 424 information of the alternative investment vehicle.

425         ~~d.e.~~ Information regarding the portfolio positions in

426 which the alternative investment vehicles invest.

427       ~~e.f.~~ Capital call and distribution notices to investors of  
428 an alternative investment vehicle.

429       ~~f.g.~~ Alternative investment agreements and related  
430 records.

431       ~~g.h.~~ Information concerning investors, other than the  
432 State Board of Administration, in an alternative investment  
433 vehicle.

434       7. "Proprietary confidential business information" does  
435 not include:

436       a. The name, address, and vintage year of an alternative  
437 investment vehicle and the identity of the principals involved  
438 in the management of the alternative investment vehicle.

439       b. The dollar amount of the commitment made by the State  
440 Board of Administration to each alternative investment vehicle  
441 since inception.

442       c. The dollar amount and date of cash contributions made  
443 by the State Board of Administration to each alternative  
444 investment vehicle since inception.

445       d. The dollar amount, on a fiscal-year-end basis, of cash  
446 distributions received by the State Board of Administration from  
447 each alternative investment vehicle.

448       e. The dollar amount, on a fiscal-year-end basis, of cash  
449 distributions received by the State Board of Administration plus  
450 the remaining value of alternative-vehicle assets that are

451 attributable to the State Board of Administration's investment  
 452 in each alternative investment vehicle.

453 f. The net internal rate of return of each alternative  
 454 investment vehicle since inception.

455 g. The investment multiple of each alternative investment  
 456 vehicle since inception.

457 h. The dollar amount of the total management fees and  
 458 costs paid on an annual fiscal-year-end basis by the State Board  
 459 of Administration to each alternative investment vehicle.

460 i. The dollar amount of cash profit received by the State  
 461 Board of Administration from each alternative investment vehicle  
 462 on a fiscal-year-end basis.

463 j. A description of any compensation, fees, or expenses,  
 464 including the amount or value, paid or agreed to be paid by a  
 465 proprietor to any person to solicit the board to make an  
 466 alternative investment or investment through an alternative  
 467 investment vehicle. This does not apply to an executive officer,  
 468 general partner, managing member, or other employee of the  
 469 proprietor, who is paid by the proprietor to solicit the board  
 470 to make such investments.

471 (c)1. Notwithstanding the provisions of paragraph (b), a  
 472 request to inspect or copy a record under s. 119.07(1) that  
 473 contains proprietary confidential business information shall be  
 474 granted if the proprietor of the information fails, within a  
 475 reasonable period of time after the request is received by the

476 State Board of Administration, to verify the following to the  
 477 State Board of Administration through a written declaration in  
 478 the manner provided by s. 92.525:

479 a. That the requested record contains proprietary  
 480 confidential business information and the specific location of  
 481 such information within the record;

482 ~~b. If the proprietary confidential business information is~~  
 483 ~~a trade secret, a verification that it is a trade secret as~~  
 484 ~~defined in s. 688.002;~~

485 b.e. That the proprietary confidential business  
 486 information is intended to be and is treated by the proprietor  
 487 as private, is the subject of efforts of the proprietor to  
 488 maintain its privacy, and is not readily ascertainable or  
 489 publicly available from any other source; and

490 c.d. That the disclosure of the proprietary confidential  
 491 business information to the public would harm the business  
 492 operations of the proprietor.

493 2. The State Board of Administration shall maintain a list  
 494 and a description of the records covered by any verified,  
 495 written declaration made under this paragraph.

496 (d) Any person may petition a court of competent  
 497 jurisdiction for an order for the public release of those  
 498 portions of any record made confidential and exempt by paragraph  
 499 (b). Any action under this paragraph must be brought in Leon  
 500 County, Florida, and the petition or other initial pleading

501 shall be served on the State Board of Administration and, if  
 502 determinable upon diligent inquiry, on the proprietor of the  
 503 information sought to be released. In any order for the public  
 504 release of a record under this paragraph, the court shall make a  
 505 finding ~~that the record or portion thereof is not a trade secret~~  
 506 ~~as defined in s. 688.002,~~ that a compelling public interest is  
 507 served by the release of the record or portions thereof which  
 508 exceed the public necessity for maintaining the confidentiality  
 509 of such record~~,~~ and that the release of the record will not  
 510 cause damage to or adversely affect the interests of the  
 511 proprietor of the released information, other private persons or  
 512 business entities, the State Board of Administration, or any  
 513 trust fund, the assets of which are invested by the State Board  
 514 of Administration.

515       Section 8. Subsection (1) of section 252.88, Florida  
 516 Statutes, is amended to read:

517       252.88 Public records.—

518       (1) Whenever EPCRA authorizes an employer to exclude trade  
 519 secret information from its submittals, the employer shall  
 520 furnish the information so excluded to the commission upon  
 521 request. ~~Such information shall be confidential and exempt from~~  
 522 ~~the provisions of s. 119.07(1). The commission shall not~~  
 523 ~~disclose such information except pursuant to a final~~  
 524 ~~determination under s. 322 of EPCRA by the Administrator of the~~  
 525 ~~Environmental Protection Agency that such information is not~~

526 ~~entitled to trade secret protection, or pursuant to an order of~~  
 527 ~~court.~~

528 Section 9. Section 252.943, Florida Statutes, is repealed.

529 Section 10. Paragraph (h) of subsection (2) of section  
 530 287.0943, Florida Statutes, is amended to read:

531 287.0943 Certification of minority business enterprises.—  
 532 (2)

533 (h) The certification procedures should allow an applicant  
 534 seeking certification to designate on the application form the  
 535 information the applicant considers to be proprietary,  
 536 confidential business information. As used in this paragraph,  
 537 "proprietary, confidential business information" includes, ~~but~~  
 538 ~~is not limited to,~~ any information that would be exempt from  
 539 public inspection pursuant to the provisions of chapter 119;  
 540 ~~trade secrets,~~ internal auditing controls and reports; ~~contract~~  
 541 ~~costs,~~ or other information the disclosure of which would injure  
 542 the affected party in the marketplace or otherwise violate s.  
 543 286.041. The executor in receipt of the application shall issue  
 544 written and final notice of any information for which  
 545 noninspection is requested but not provided for by law.

546 Section 11. Subsection (7) of section 288.047, Florida  
 547 Statutes, is amended to read:

548 288.047 Quick-response training for economic development.—

549 (7) In providing instruction pursuant to this section,  
 550 materials that relate to methods of manufacture or production,

551 ~~potential trade secrets,~~ business transactions, or proprietary  
 552 information received, produced, ascertained, or discovered by  
 553 employees of the respective departments, district school boards,  
 554 community college district boards of trustees, or other  
 555 personnel employed for the purposes of this section is  
 556 confidential and exempt from the provisions of s. 119.07(1). The  
 557 state may seek copyright protection for instructional materials  
 558 and ancillary written documents developed wholly or partially  
 559 with state funds as a result of instruction provided pursuant to  
 560 this section, except for materials that are confidential and  
 561 exempt from the provisions of s. 119.07(1).

562 Section 12. Paragraph (c) of subsection (1) and subsection  
 563 (3) of section 288.075, Florida Statutes, are amended to read:

564 288.075 Confidentiality of records.—

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

566 ~~(c) "Trade secret" has the same meaning as in s. 688.002.~~

567 ~~(3) TRADE SECRETS.—Trade secrets held by an economic~~  
 568 ~~development agency are confidential and exempt from s. 119.07(1)~~  
 569 ~~and s. 24(a), Art. I of the State Constitution.~~

570 Section 13. Subsection (9) of section 288.1226, Florida  
 571 Statutes, is amended to read:

572 288.1226 Florida Tourism Industry Marketing Corporation;  
 573 use of property; board of directors; duties; audit.—

574 (9) PUBLIC RECORDS EXEMPTION.—The identity of any person  
 575 who responds to a marketing project or advertising research

576 project conducted by the corporation in the performance of its  
 577 duties on behalf of Enterprise Florida, Inc., is ~~or trade~~  
 578 ~~secrets as defined by s. 812.081 obtained pursuant to such~~  
 579 ~~activities,~~ are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 580 the State Constitution. ~~This subsection is subject to the Open~~  
 581 ~~Government Sunset Review Act in accordance with s. 119.15 and~~  
 582 ~~shall stand repealed on October 2, 2021, unless reviewed and~~  
 583 ~~saved from repeal through reenactment by the Legislature.~~

584 Section 14. Paragraph (d) of subsection (3) of section  
 585 288.776, Florida Statutes, is amended to read:

586 288.776 Board of directors; powers and duties.—

587 (3) The board shall:

588 (d) Adopt policies, including criteria, establishing which  
 589 exporters and export transactions shall be eligible for  
 590 insurance, coinsurance, loan guarantees, and direct, guaranteed,  
 591 or collateralized loans which may be extended by the  
 592 corporation. Pursuant to this subsection, the board shall  
 593 include the following criteria:

594 1. Any individual signing any corporation loan application  
 595 and loan or guarantee agreement shall have an equity in the  
 596 business applying for financial assistance.

597 2. Each program shall exclusively support the export of  
 598 goods and services by small and medium-sized businesses which  
 599 are domiciled in this state. Priority shall be given to goods  
 600 which have value added in this state.

601 3. Financial assistance shall only be extended when at  
 602 least one of the following circumstances exists:

603 a. The assistance is required to secure the participation  
 604 of small and medium-sized export businesses in federal, state,  
 605 or private financing programs.

606 b. No conventional source of lender support is available  
 607 for the business from public or private financing sources.

608  
 609 Personal financial records, ~~trade secrets~~, or proprietary  
 610 information of applicants shall be confidential and exempt from  
 611 the provisions of s. 119.07(1).

612 Section 15. Section 288.9520, Florida Statutes, is amended  
 613 to read:

614 288.9520 Public records exemption.—Materials that relate  
 615 to methods of manufacture or production, ~~potential trade~~  
 616 ~~secrets~~, potentially patentable material, ~~actual trade secrets~~,  
 617 business transactions, financial and proprietary information,  
 618 and agreements or proposals to receive funding that are  
 619 received, generated, ascertained, or discovered by Enterprise  
 620 Florida, Inc., including its affiliates or subsidiaries and  
 621 partnership participants, such as private enterprises,  
 622 educational institutions, and other organizations, are  
 623 confidential and exempt from the provisions of s. 119.07(1) and  
 624 s. 24(a), Art. I of the State Constitution, except that a  
 625 recipient of Enterprise Florida, Inc., research funds shall make

626 available, upon request, the title and description of the  
 627 research project, the name of the researcher, and the amount and  
 628 source of funding provided for the project.

629 Section 16. Subsection (5) of section 288.9607, Florida  
 630 Statutes, is amended to read:

631 288.9607 Guaranty of bond issues.—

632 (5) Personal financial records, ~~trade secrets,~~ or  
 633 proprietary information of applicants delivered to or obtained  
 634 by the corporation shall be confidential and exempt from the  
 635 provisions of s. 119.07(1).

636 Section 17. Paragraph (f) of subsection (1), paragraph (a)  
 637 of subsection (2), paragraph (a) of subsection (3), and  
 638 paragraphs (b) and (c) of subsection (4) of section 288.9626,  
 639 Florida Statutes, are amended to read:

640 288.9626 Exemptions from public records and public  
 641 meetings requirements for the Florida Opportunity Fund.—

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

643 (f)1. "Proprietary confidential business information"  
 644 means information that has been designated by the proprietor  
 645 when provided to the Florida Opportunity Fund as information  
 646 that is owned or controlled by a proprietor; that is intended to  
 647 be and is treated by the proprietor as private, the disclosure  
 648 of which would harm the business operations of the proprietor  
 649 and has not been intentionally disclosed by the proprietor  
 650 unless pursuant to a private agreement that provides that the

651 information will not be released to the public except as  
 652 required by law or legal process, or pursuant to law or an order  
 653 of a court or administrative body; and that concerns:

654 ~~a. Trade secrets as defined in s. 688.002.~~

655 a.b. Information provided to the Florida Opportunity Fund  
 656 regarding an existing or prospective alternative investment in a  
 657 private equity fund, venture capital fund, angel fund, or  
 658 portfolio company that is proprietary to the provider of the  
 659 information.

660 b.e. Financial statements and auditor reports of an  
 661 alternative investment vehicle or portfolio company, unless  
 662 publicly released by the alternative investment vehicle or  
 663 portfolio company.

664 c.d. Meeting materials of an alternative investment  
 665 vehicle or portfolio company relating to financial, operating,  
 666 or marketing information of the alternative investment vehicle  
 667 or portfolio company.

668 d.e. Information regarding the portfolio positions in  
 669 which the alternative investment vehicles or Florida Opportunity  
 670 Fund invest.

671 e.f. Capital call and distribution notices to investors or  
 672 the Florida Opportunity Fund of an alternative investment  
 673 vehicle.

674 f.g. Alternative investment agreements and related  
 675 records.

676        ~~g.h.~~ Information concerning investors, other than the  
 677 Florida Opportunity Fund, in an alternative investment vehicle  
 678 or portfolio company.

679            2. "Proprietary confidential business information" does  
 680 not include:

681            a. The name, address, and vintage year of an alternative  
 682 investment vehicle or Florida Opportunity Fund and the identity  
 683 of the principals involved in the management of the alternative  
 684 investment vehicle or Florida Opportunity Fund.

685            b. The dollar amount of the commitment made by the Florida  
 686 Opportunity Fund to each alternative investment vehicle since  
 687 inception, if any.

688            c. The dollar amount and date of cash contributions made  
 689 by the Florida Opportunity Fund to each alternative investment  
 690 vehicle since inception, if any.

691            d. The dollar amount, on a fiscal-year-end basis, of cash  
 692 or other fungible distributions received by the Florida  
 693 Opportunity Fund from each alternative investment vehicle.

694            e. The dollar amount, on a fiscal-year-end basis, of cash  
 695 or other fungible distributions received by the Florida  
 696 Opportunity Fund plus the remaining value of alternative-vehicle  
 697 assets that are attributable to the Florida Opportunity Fund's  
 698 investment in each alternative investment vehicle.

699            f. The net internal rate of return of each alternative  
 700 investment vehicle since inception.

701 g. The investment multiple of each alternative investment  
702 vehicle since inception.

703 h. The dollar amount of the total management fees and  
704 costs paid on an annual fiscal-year-end basis by the Florida  
705 Opportunity Fund to each alternative investment vehicle.

706 i. The dollar amount of cash profit received by the  
707 Florida Opportunity Fund from each alternative investment  
708 vehicle on a fiscal-year-end basis.

709 (2) PUBLIC RECORDS EXEMPTION.—

710 (a) The following records held by the Florida Opportunity  
711 Fund are confidential and exempt from s. 119.07(1) and s. 24(a),  
712 Art. I of the State Constitution:

713 1. Materials that relate to methods of manufacture or  
714 production, ~~potential trade secrets~~, or patentable material  
715 received, generated, ascertained, or discovered during the  
716 course of research or through research projects and that are  
717 provided by a proprietor.

718 2. Information that would identify an investor or  
719 potential investor who desires to remain anonymous in projects  
720 reviewed by the Florida Opportunity Fund.

721 3. Proprietary confidential business information regarding  
722 alternative investments for 7 years after the termination of the  
723 alternative investment.

724 (3) PUBLIC MEETINGS EXEMPTION.—

725 (a) That portion of a meeting of the board of directors

726 of the Florida Opportunity Fund at which information is  
 727 discussed which is confidential and exempt under subsection (2)  
 728 or s. 688.01 is exempt from s. 286.011 and s. 24(b), Art. I of  
 729 the State Constitution.

730 (4) REQUEST TO INSPECT OR COPY A RECORD.—

731 (b) Notwithstanding the provisions of paragraph (2)(a), a  
 732 request to inspect or copy a public record that contains  
 733 proprietary confidential business information shall be granted  
 734 if the proprietor of the information fails, within a reasonable  
 735 period of time after the request is received by the Florida  
 736 Opportunity Fund, to verify the following to the Florida  
 737 Opportunity Fund through a written declaration in the manner  
 738 provided by s. 92.525:

739 1. That the requested record contains proprietary  
 740 confidential business information and the specific location of  
 741 such information within the record;

742 ~~2. If the proprietary confidential business information is~~  
 743 ~~a trade secret, a verification that it is a trade secret as~~  
 744 ~~defined in s. 688.002;~~

745 2.3. That the proprietary confidential business  
 746 information is intended to be and is treated by the proprietor  
 747 as private, is the subject of efforts of the proprietor to  
 748 maintain its privacy, and is not readily ascertainable or  
 749 publicly available from any other source; and

750 3.4. That the disclosure of the proprietary confidential

751 business information to the public would harm the business  
 752 operations of the proprietor.

753 (c)1. Any person may petition a court of competent  
 754 jurisdiction for an order for the public release of those  
 755 portions of any record made confidential and exempt by  
 756 subsection (2).

757 2. Any action under this subsection must be brought in  
 758 Orange County, and the petition or other initial pleading shall  
 759 be served on the Florida Opportunity Fund and, if determinable  
 760 upon diligent inquiry, on the proprietor of the information  
 761 sought to be released.

762 3. In any order for the public release of a record under  
 763 this subsection, the court shall make a finding that:

764 ~~a. The record or portion thereof is not a trade secret as~~  
 765 ~~defined in s. 688.002;~~

766 a. b. A compelling public interest is served by the  
 767 release of the record or portions thereof which exceed the  
 768 public necessity for maintaining the confidentiality of such  
 769 record; and

770 b. e. The release of the record will not cause damage to  
 771 or adversely affect the interests of the proprietor of the  
 772 released information, other private persons or business  
 773 entities, or the Florida Opportunity Fund.

774 Section 18. Paragraph (b) of subsection (1), paragraph (a)  
 775 of subsection (2), paragraph (a) of subsection (3), and

776 paragraphs (b) and (c) of subsection (4) of section 288.9627,  
 777 Florida Statutes, are amended to read:  
 778 288.9627 Exemptions from public records and public  
 779 meetings requirements for the Institute for Commercialization of  
 780 Florida Technology.-

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

782 (b)1. "Proprietary confidential business information"  
 783 means information that has been designated by the proprietor  
 784 when provided to the institute as information that is owned or  
 785 controlled by a proprietor; that is intended to be and is  
 786 treated by the proprietor as private, the disclosure of which  
 787 would harm the business operations of the proprietor and has not  
 788 been intentionally disclosed by the proprietor unless pursuant  
 789 to a private agreement that provides that the information will  
 790 not be released to the public except as required by law or legal  
 791 process, or pursuant to law or an order of a court or  
 792 administrative body; and that concerns:

793 ~~a. Trade secrets as defined in s. 688.002.~~

794 a.b. Financial statements and internal or external auditor  
 795 reports of a proprietor corporation, partnership, or person  
 796 requesting confidentiality under this statute, unless publicly  
 797 released by the proprietor.

798 b.e. Meeting materials related to financial, operating,  
 799 investment, or marketing information of the proprietor  
 800 corporation, partnership, or person.

801        c.d. Information concerning private investors in the  
 802 proprietor corporation, partnership, or person.

803        2. "Proprietary confidential business information" does  
 804 not include:

805            a. The identity and primary address of the proprietor's  
 806 principals.

807            b. The dollar amount and date of the financial commitment  
 808 or contribution made by the institute.

809            c. The dollar amount, on a fiscal-year-end basis, of cash  
 810 repayments or other fungible distributions received by the  
 811 institute from each proprietor.

812            d. The dollar amount, if any, of the total management fees  
 813 and costs paid on an annual fiscal-year-end basis by the  
 814 institute.

815        (2) PUBLIC RECORDS EXEMPTION.—

816            (a) The following records held by the institute are  
 817 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 818 of the State Constitution:

819            1. Materials that relate to methods of manufacture or  
 820 production, ~~potential trade secrets~~, or patentable material  
 821 received, generated, ascertained, or discovered during the  
 822 course of research or through research projects conducted by  
 823 universities and other publicly supported organizations in this  
 824 state and that are provided to the institute by a proprietor.

825            2. Information that would identify an investor or

826 potential investor who desires to remain anonymous in projects  
 827 reviewed by the institute for assistance.

828 3. Any information received from a person from another  
 829 state or nation or the Federal Government which is otherwise  
 830 confidential or exempt pursuant to the laws of that state or  
 831 nation or pursuant to federal law.

832 4. Proprietary confidential business information for 7  
 833 years after the termination of the institute's financial  
 834 commitment to the company.

835 (3) PUBLIC MEETINGS EXEMPTION.—

836 (a) That portion of a meeting of the institute's board of  
 837 directors at which information is discussed which is  
 838 confidential and exempt under subsection (2) or s. 688.01 is  
 839 exempt from s. 286.011 and s. 24(b), Art. I of the State  
 840 Constitution.

841 (4) REQUEST TO INSPECT OR COPY A RECORD.—

842 (b) Notwithstanding the provisions of paragraph (2)(a), a  
 843 request to inspect or copy a public record that contains  
 844 proprietary confidential business information shall be granted  
 845 if the proprietor of the information fails, within a reasonable  
 846 period of time after the request is received by the institute,  
 847 to verify the following to the institute through a written  
 848 declaration in the manner provided by s. 92.525:

849 1. That the requested record contains proprietary  
 850 confidential business information and the specific location of

851 such information within the record;

852 ~~2. If the proprietary confidential business information is~~  
 853 ~~a trade secret, a verification that it is a trade secret as~~  
 854 ~~defined in s. 688.002;~~

855 2.3. That the proprietary confidential business  
 856 information is intended to be and is treated by the proprietor  
 857 as private, is the subject of efforts of the proprietor to  
 858 maintain its privacy, and is not readily ascertainable or  
 859 publicly available from any other source; and

860 3.4. That the disclosure of the proprietary confidential  
 861 business information to the public would harm the business  
 862 operations of the proprietor.

863 (c)1. Any person may petition a court of competent  
 864 jurisdiction for an order for the public release of those  
 865 portions of any record made confidential and exempt by  
 866 subsection (2).

867 2. Any action under this subsection must be brought in  
 868 Palm Beach County or Alachua County, and the petition or other  
 869 initial pleading shall be served on the institute and, if  
 870 determinable upon diligent inquiry, on the proprietor of the  
 871 information sought to be released.

872 3. In any order for the public release of a record under  
 873 this subsection, the court shall make a finding that:

874 ~~a. The record or portion thereof is not a trade secret as~~  
 875 ~~defined in s. 688.002;~~

876 a.~~b.~~ A compelling public interest is served by the release  
 877 of the record or portions thereof which exceed the public  
 878 necessity for maintaining the confidentiality of such record;  
 879 and

880 b.~~e.~~ The release of the record will not cause damage to or  
 881 adversely affect the interests of the proprietor of the released  
 882 information, other private persons or business entities, or the  
 883 institute.

884 Section 19. Section 331.326, Florida Statutes, is amended  
 885 to read:

886 331.326 Information relating to trade secrets  
 887 confidential.—The records of Space Florida regarding matters  
 888 encompassed by this act are public records subject to chapter  
 889 119. ~~Any information held by Space Florida which is a trade~~  
 890 ~~secret, as defined in s. 812.081, including trade secrets of~~  
 891 ~~Space Florida, any spaceport user, or the space industry~~  
 892 ~~business, is confidential and exempt from s. 119.07(1) and s.~~  
 893 ~~24(a), Art. I of the State Constitution and may not be~~  
 894 ~~disclosed. If Space Florida determines that any information~~  
 895 ~~requested by the public will reveal a trade secret, it shall, in~~  
 896 ~~writing, inform the person making the request of that~~  
 897 ~~determination. The determination is a final order as defined in~~  
 898 ~~s. 120.52.~~ Any meeting or portion of a meeting of Space  
 899 Florida's board is exempt from s. 286.011 and s. 24(b), Art. I  
 900 of the State Constitution when the board is discussing trade

901 secrets as defined in s. 688.01. Any public record generated  
 902 during the closed portions of the meetings, such as minutes,  
 903 tape recordings, and notes, is confidential and exempt from s.  
 904 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This~~  
 905 ~~section is subject to the Open Government Sunset Review Act in~~  
 906 ~~accordance with s. 119.15 and shall stand repealed on October 2,~~  
 907 ~~2021, unless reviewed and saved from repeal through reenactment~~  
 908 ~~by the Legislature.~~

909 Section 20. Subsection (4) of section 334.049, Florida  
 910 Statutes, is amended to read:

911 334.049 Patents, copyrights, trademarks; notice to  
 912 Department of State; ~~confidentiality of trade secrets.~~

913 ~~(4) Any information obtained by the department as a result~~  
 914 ~~of research and development projects and revealing a method of~~  
 915 ~~process, production, or manufacture which is a trade secret as~~  
 916 ~~defined in s. 688.002, is confidential and exempt from the~~  
 917 ~~provisions of s. 119.07(1).~~

918 Section 21. Section 350.121, Florida Statutes, is amended  
 919 to read:

920 350.121 Commission inquiries; confidentiality of business  
 921 material.—If the commission undertakes an inquiry, any records,  
 922 documents, papers, maps, books, tapes, photographs, files, sound  
 923 recordings, or other business material, regardless of form or  
 924 characteristics, obtained by the commission incident to the  
 925 inquiry are considered confidential and exempt from s. 119.07(1)

926 while the inquiry is pending. If at the conclusion of an inquiry  
 927 the commission undertakes a formal proceeding, any matter  
 928 determined by the commission or by a judicial or administrative  
 929 body, federal or state, to be ~~trade secrets or~~ proprietary  
 930 confidential business information coming into its possession  
 931 pursuant to such inquiry shall be considered confidential and  
 932 exempt from s. 119.07(1). Such material may be used in any  
 933 administrative or judicial proceeding so long as the  
 934 confidential or proprietary nature of the material is  
 935 maintained.

936 Section 22. Subsection (3) of section 364.183, Florida  
 937 Statutes, is amended to read:

938 364.183 Access to company records.-

939 (3) The term "proprietary confidential business  
 940 information" means information, regardless of form or  
 941 characteristics, which is owned or controlled by the person or  
 942 company, is intended to be and is treated by the person or  
 943 company as private in that the disclosure of the information  
 944 would cause harm to the ratepayers or the person's or company's  
 945 business operations, and has not been disclosed unless disclosed  
 946 pursuant to a statutory provision, an order of a court or  
 947 administrative body, or private agreement that provides that the  
 948 information will not be released to the public. The term  
 949 includes, ~~but is not limited to:~~

950 ~~(a) Trade secrets.~~

951        (a)~~(b)~~ Internal auditing controls and reports of internal  
 952 auditors.

953        (b)~~(e)~~ Security measures, systems, or procedures.

954        (c)~~(d)~~ Information concerning bids or other contractual  
 955 data, the disclosure of which would impair the efforts of the  
 956 company or its affiliates to contract for goods or services on  
 957 favorable terms.

958        (d)~~(e)~~ Information relating to competitive interests, the  
 959 disclosure of which would impair the competitive business of the  
 960 provider of information.

961        (e)~~(f)~~ Employee personnel information unrelated to  
 962 compensation, duties, qualifications, or responsibilities.

963        Section 23. Subsection (3) of section 365.174, Florida  
 964 Statutes, is amended to read:

965        365.174 Proprietary confidential business information.—

966        (3) As used in this section, the term "proprietary  
 967 confidential business information" means customer lists,  
 968 customer numbers, individual or aggregate customer data by  
 969 location, usage and capacity data, network facilities used to  
 970 serve subscribers, technology descriptions, or technical  
 971 information, ~~or trade secrets, including trade secrets as~~  
 972 ~~defined in s. 812.081,~~ and the actual or developmental costs of  
 973 E911 systems that are developed, produced, or received  
 974 internally by a provider or by a provider's employees,  
 975 directors, officers, or agents.

976 Section 24. Subsection (3) of section 366.093, Florida  
 977 Statutes, is amended to read:

978 366.093 Public utility records; confidentiality.—

979 (3) Proprietary confidential business information means  
 980 information, regardless of form or characteristics, which is  
 981 owned or controlled by the person or company, is intended to be  
 982 and is treated by the person or company as private in that the  
 983 disclosure of the information would cause harm to the ratepayers  
 984 or the person's or company's business operations, and has not  
 985 been disclosed unless disclosed pursuant to a statutory  
 986 provision, an order of a court or administrative body, or  
 987 private agreement that provides that the information will not be  
 988 released to the public. Proprietary confidential business  
 989 information includes, ~~but is not limited to:~~

990 ~~(a) Trade secrets.~~

991 (a) ~~(b)~~ Internal auditing controls and reports of internal  
 992 auditors.

993 (b) ~~(e)~~ Security measures, systems, or procedures.

994 (c) ~~(d)~~ Information concerning bids or other contractual  
 995 data, the disclosure of which would impair the efforts of the  
 996 public utility or its affiliates to contract for goods or  
 997 services on favorable terms.

998 (d) ~~(e)~~ Information relating to competitive interests, the  
 999 disclosure of which would impair the competitive business of the  
 1000 provider of the information.

1001            (e)~~(f)~~ Employee personnel information unrelated to  
 1002 compensation, duties, qualifications, or responsibilities.  
 1003            Section 25. Subsection (3) of section 367.156, Florida  
 1004 Statutes, is amended to read:  
 1005            367.156 Public utility records; confidentiality.—  
 1006            (3) Proprietary confidential business information means  
 1007 information, regardless of form or characteristics, which is  
 1008 owned or controlled by the person or company, is intended to be  
 1009 and is treated by the person or company as private in that the  
 1010 disclosure of the information would cause harm to the ratepayers  
 1011 or the person's or company's business operations, and has not  
 1012 been disclosed unless disclosed pursuant to a statutory  
 1013 provision, an order of a court or administrative body, or a  
 1014 private agreement that provides that the information will not be  
 1015 released to the public. Proprietary business information  
 1016 includes, ~~but is not limited to:~~  
 1017            ~~(a) Trade secrets.~~  
 1018            (a)~~(b)~~ Internal auditing controls and reports of internal  
 1019 auditors.  
 1020            (b)~~(e)~~ Security measures, systems, or procedures.  
 1021            (c)~~(d)~~ Information concerning bids or other contractual  
 1022 data, the disclosure of which would impair the efforts of the  
 1023 utility or its affiliates to contract for goods or services on  
 1024 favorable terms.  
 1025            (d)~~(e)~~ Information relating to competitive interests, the

1026 disclosure of which would impair the competitive businesses of  
 1027 the provider of the information.

1028 (e)~~(f)~~ Employee personnel information unrelated to  
 1029 compensation, duties, qualifications, or responsibilities.

1030 Section 26. Subsection (3) of section 368.108, Florida  
 1031 Statutes, is amended to read:

1032 368.108 Confidentiality; discovery.—

1033 (3) "Proprietary confidential business information" means  
 1034 information, regardless of form or characteristics, which is  
 1035 owned or controlled by the person or company, is intended to be  
 1036 and is treated by the person or company as private in that the  
 1037 disclosure of the information would cause harm to the ratepayers  
 1038 or the person's or company's business operations, and has not  
 1039 been disclosed unless disclosed pursuant to a statutory  
 1040 provision, an order of a court or administrative body, or a  
 1041 private agreement that provides that the information will not be  
 1042 released to the public. "Proprietary confidential business  
 1043 information" includes, ~~but is not limited to:~~

1044 ~~(a) Trade secrets.~~

1045 (a)~~(b)~~ Internal auditing controls and reports of internal  
 1046 auditors.

1047 (b)~~(e)~~ Security measures, systems, or procedures.

1048 (c)~~(d)~~ Information concerning bids or other contractual  
 1049 data, the disclosure of which would impair the efforts of the  
 1050 natural gas transmission company or its affiliates to contract

1051 for goods or services on favorable terms.

1052 ~~(d)(e)~~ Information relating to competitive interests, the  
 1053 disclosure of which would impair the competitive business of the  
 1054 provider of the information.

1055 ~~(e)(f)~~ Employee personnel information unrelated to  
 1056 compensation, duties, qualifications, or responsibilities.

1057 Section 27. Section 381.83, Florida Statutes, is repealed.

1058 Section 28. Paragraph (c) of subsection (2) of section  
 1059 395.3035, Florida Statutes, is amended to read:

1060 395.3035 Confidentiality of hospital records and  
 1061 meetings.—

1062 (2) The following records and information of any hospital  
 1063 that is subject to chapter 119 and s. 24(a), Art. I of the State  
 1064 Constitution are confidential and exempt from the provisions of  
 1065 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1066 (c) ~~Trade secrets, as defined in s. 688.002, including~~  
 1067 Reimbursement methodologies and rates.

1068 Section 29. Subsection (2) and paragraph (b) of subsection  
 1069 (3) of section 403.7046, Florida Statutes, are amended to read:

1070 403.7046 Regulation of recovered materials.—

1071 (2) Notwithstanding s. 688.01, information reported  
 1072 pursuant to this section or any rule adopted pursuant to this  
 1073 section which, if disclosed, would reveal a trade secret, as  
 1074 defined in s. 688.01, may be provided by the department s.  
 1075 ~~812.081, is confidential and exempt from s. 119.07(1) and s.~~

1076 ~~24(a), Art. I of the State Constitution. For reporting or~~  
 1077 ~~information purposes, however, the department may provide this~~  
 1078 ~~information~~ in such form that the names of the persons reporting  
 1079 such information and the specific information reported are not  
 1080 revealed. ~~This subsection is subject to the Open Government~~  
 1081 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~  
 1082 ~~repealed on October 2, 2021, unless reviewed and saved from~~  
 1083 ~~repeal through reenactment by the Legislature.~~

1084 (3) Except as otherwise provided in this section or  
 1085 pursuant to a special act in effect on or before January 1,  
 1086 1993, a local government may not require a commercial  
 1087 establishment that generates source-separated recovered  
 1088 materials to sell or otherwise convey its recovered materials to  
 1089 the local government or to a facility designated by the local  
 1090 government, nor may the local government restrict such a  
 1091 generator's right to sell or otherwise convey such recovered  
 1092 materials to any properly certified recovered materials dealer  
 1093 who has satisfied the requirements of this section. A local  
 1094 government may not enact any ordinance that prevents such a  
 1095 dealer from entering into a contract with a commercial  
 1096 establishment to purchase, collect, transport, process, or  
 1097 receive source-separated recovered materials.

1098 (b)~~1~~. Before engaging in business within the jurisdiction  
 1099 of the local government, a recovered materials dealer or  
 1100 pyrolysis facility must provide the local government with a copy

1101 of the certification provided for in this section. In addition,  
 1102 the local government may establish a registration process  
 1103 whereby a recovered materials dealer or pyrolysis facility must  
 1104 register with the local government before engaging in business  
 1105 within the jurisdiction of the local government. Such  
 1106 registration process is limited to requiring the dealer or  
 1107 pyrolysis facility to register its name, including the owner or  
 1108 operator of the dealer or pyrolysis facility, and, if the dealer  
 1109 or pyrolysis facility is a business entity, its general or  
 1110 limited partners, its corporate officers and directors, its  
 1111 permanent place of business, evidence of its certification under  
 1112 this section, and a certification that the recovered materials  
 1113 or post-use polymers will be processed at a recovered materials  
 1114 processing facility or pyrolysis facility satisfying the  
 1115 requirements of this section. The local government may not use  
 1116 the information provided in the registration application to  
 1117 compete unfairly with the recovered materials dealer until 90  
 1118 days after receipt of the application. All counties, and  
 1119 municipalities whose population exceeds 35,000 according to the  
 1120 population estimates determined pursuant to s. 186.901, may  
 1121 establish a reporting process that must be limited to the  
 1122 regulations, reporting format, and reporting frequency  
 1123 established by the department pursuant to this section, which  
 1124 must, at a minimum, include requiring the dealer or pyrolysis  
 1125 facility to identify the types and approximate amount of

1126 recovered materials or post-use polymers collected, recycled, or  
 1127 reused during the reporting period; the approximate percentage  
 1128 of recovered materials or post-use polymers reused, stored, or  
 1129 delivered to a recovered materials processing facility or  
 1130 pyrolysis facility or disposed of in a solid waste disposal  
 1131 facility; and the locations where any recovered materials or  
 1132 post-use polymers were disposed of as solid waste. The local  
 1133 government may charge the dealer or pyrolysis facility a  
 1134 registration fee commensurate with and no greater than the cost  
 1135 incurred by the local government in operating its registration  
 1136 program. Registration program costs are limited to those costs  
 1137 associated with the activities described in this paragraph  
 1138 ~~subparagraph~~. Any reporting or registration process established  
 1139 by a local government with regard to recovered materials or  
 1140 post-use polymers is governed by this section and department  
 1141 rules adopted pursuant thereto.

1142 ~~2. Information reported under this subsection which, if~~  
 1143 ~~disclosed, would reveal a trade secret, as defined in s.~~  
 1144 ~~812.081, is confidential and exempt from s. 119.07(1) and s.~~  
 1145 ~~24(a), Art. I of the State Constitution. This subparagraph is~~  
 1146 ~~subject to the Open Government Sunset Review Act in accordance~~  
 1147 ~~with s. 119.15 and shall stand repealed on October 2, 2021,~~  
 1148 ~~unless reviewed and saved from repeal through reenactment by the~~  
 1149 ~~Legislature.~~

1150 Section 30. Section 403.73, Florida Statutes, is repealed.

1151           Section 31. Paragraph (c) of subsection (1) of section  
1152 408.061, Florida Statutes, is amended to read:

1153           408.061 Data collection; uniform systems of financial  
1154 reporting; information relating to physician charges;  
1155 confidential information; immunity.-

1156           (1) The agency shall require the submission by health care  
1157 facilities, health care providers, and health insurers of data  
1158 necessary to carry out the agency's duties and to facilitate  
1159 transparency in health care pricing data and quality measures.  
1160 Specifications for data to be collected under this section shall  
1161 be developed by the agency and applicable contract vendors, with  
1162 the assistance of technical advisory panels including  
1163 representatives of affected entities, consumers, purchasers, and  
1164 such other interested parties as may be determined by the  
1165 agency.

1166           (c) Data to be submitted by health insurers may include,  
1167 but are not limited to: claims, payments to health care  
1168 facilities and health care providers as specified by rule,  
1169 premium, administration, and financial information. Data  
1170 submitted shall be certified by the chief financial officer, an  
1171 appropriate and duly authorized representative, or an employee  
1172 of the insurer that the information submitted is true and  
1173 accurate. ~~Information that is considered a trade secret under s.~~  
1174 ~~812.081 shall be clearly designated.~~

1175           Section 32. Subsection (1) of section 408.185, Florida

1176 Statutes, is amended to read:

1177       408.185 Information submitted for review of antitrust  
 1178 issues; confidentiality.—The following information held by the  
 1179 Office of the Attorney General, which is submitted by a member  
 1180 of the health care community pursuant to a request for an  
 1181 antitrust no-action letter shall be confidential and exempt from  
 1182 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 1183 Constitution for 1 year after the date of submission.

1184       ~~(1) Documents that reveal trade secrets as defined in s.~~  
 1185 ~~688.002.~~

1186       Section 33. Paragraph (a) of subsection (14) of section  
 1187 408.910, Florida Statutes, is amended to read:

1188       408.910 Florida Health Choices Program.—

1189       (14) EXEMPTION FROM PUBLIC RECORDS REQUIREMENTS.—

1190       (a) Definitions.—For purposes of this subsection, the  
 1191 term:

1192       1. "Buyer's representative" means a participating  
 1193 insurance agent as described in paragraph (4)(g).

1194       2. "Enrollee" means an employer who is eligible to enroll  
 1195 in the program pursuant to paragraph (4)(a).

1196       3. "Participant" means an individual who is eligible to  
 1197 participate in the program pursuant to paragraph (4)(b).

1198       4. "Proprietary confidential business information" means  
 1199 information, regardless of form or characteristics, that is  
 1200 owned or controlled by a vendor requesting confidentiality under

1201 this section; that is intended to be and is treated by the  
 1202 vendor as private in that the disclosure of the information  
 1203 would cause harm to the business operations of the vendor; that  
 1204 has not been disclosed unless disclosed pursuant to a statutory  
 1205 provision, an order of a court or administrative body, or a  
 1206 private agreement providing that the information may be released  
 1207 to the public; and that is information concerning:

- 1208 a. Business plans.
- 1209 b. Internal auditing controls and reports of internal  
 1210 auditors.
- 1211 c. Reports of external auditors for privately held  
 1212 companies.
- 1213 d. Client and customer lists.
- 1214 e. Potentially patentable material.
- 1215 ~~f. A trade secret as defined in s. 688.002.~~

1216 5. "Vendor" means a participating insurer or other  
 1217 provider of services as described in paragraph (4)(d).

1218 Section 34. Section 409.91196, Florida Statutes, is  
 1219 amended to read:

1220 409.91196 Supplemental rebate agreements; public records  
 1221 and public meetings exemption.—

1222 (1) The rebate amount, percent of rebate, manufacturer's  
 1223 pricing, and supplemental rebate, ~~and other trade secrets as~~  
 1224 ~~defined in s. 688.002 that the agency has identified for use in~~  
 1225 ~~negotiations,~~ held by the Agency for Health Care Administration

1226 under s. 409.912(5)(a)7. are confidential and exempt from s.  
 1227 119.07(1) and s. 24(a), Art. I of the State Constitution.

1228 (2) That portion of a meeting of the Medicaid  
 1229 Pharmaceutical and Therapeutics Committee at which the rebate  
 1230 amount, percent of rebate, manufacturer's pricing, or  
 1231 supplemental rebate, or confidential and exempt ~~other~~ trade  
 1232 secrets as provided for in s. 688.01 ~~defined in s. 688.002~~ that  
 1233 the agency has identified for use in negotiations, are discussed  
 1234 is exempt from s. 286.011 and s. 24(b), Art. I of the State  
 1235 Constitution. A record shall be made of each exempt portion of a  
 1236 meeting. Such record must include the times of commencement and  
 1237 termination, all discussions and proceedings, the names of all  
 1238 persons present at any time, and the names of all persons  
 1239 speaking. No exempt portion of a meeting may be held off the  
 1240 record.

1241 Section 35. Paragraph (b) of subsection (2) of section  
 1242 440.108, Florida Statutes, is amended to read:

1243 440.108 Investigatory records relating to workers'  
 1244 compensation employer compliance; confidentiality.-

1245 (2) After an investigation is completed or ceases to be  
 1246 active, information in records relating to the investigation  
 1247 remains confidential and exempt from the provisions of s.  
 1248 119.07(1) and s. 24(a), Art. I of the State Constitution if  
 1249 disclosure of that information would:

1250 ~~(b) Reveal a trade secret, as defined in s. 688.002;~~

1251 Section 36. Paragraph (c) of subsection (1) of section  
 1252 494.00125, Florida Statutes, is amended to read:  
 1253 494.00125 Public records exemptions.—  
 1254 (1) INVESTIGATIONS OR EXAMINATIONS.—  
 1255 (c) Except as necessary for the office to enforce the  
 1256 provisions of this chapter, a consumer complaint and other  
 1257 information relative to an investigation or examination shall  
 1258 remain confidential and exempt from s. 119.07(1) after the  
 1259 investigation or examination is completed or ceases to be active  
 1260 to the extent disclosure would:

- 1261 1. Jeopardize the integrity of another active
- 1262 investigation or examination.
- 1263 2. Reveal the name, address, telephone number, social
- 1264 security number, or any other identifying number or information
- 1265 of any complainant, customer, or account holder.
- 1266 3. Disclose the identity of a confidential source.
- 1267 4. Disclose investigative techniques or procedures.
- 1268 ~~5. Reveal a trade secret as defined in s. 688.002.~~

1269 Section 37. Subsection (4) of section 497.172, Florida  
 1270 Statutes, is amended to read:

1271 497.172 Public records exemptions; public meetings  
 1272 exemptions.—

1273 ~~(4) TRADE SECRETS. Trade secrets, as defined in s.~~  
 1274 ~~688.002, held by the department or board, are confidential and~~  
 1275 ~~exempt from s. 119.07(1) and s. 24(a), Art. I of the State~~

1276 ~~Constitution.~~

1277       Section 38. Paragraph (c) of subsection (3) of section  
1278 499.012, Florida Statutes, is amended to read:

1279       499.012 Permit application requirements.—

1280       (3)

1281       ~~(c) Information submitted by an applicant on an~~  
1282 ~~application required pursuant to this subsection which is a~~  
1283 ~~trade secret, as defined in s. 812.081, shall be maintained by~~  
1284 ~~the department as trade secret information pursuant to s.~~  
1285 ~~499.051(7).~~

1286       Section 39. Paragraph (b) of subsection (7) of section  
1287 499.0121, Florida Statutes, is amended to read:

1288       499.0121 Storage and handling of prescription drugs;  
1289 recordkeeping.—The department shall adopt rules to implement  
1290 this section as necessary to protect the public health, safety,  
1291 and welfare. Such rules shall include, but not be limited to,  
1292 requirements for the storage and handling of prescription drugs  
1293 and for the establishment and maintenance of prescription drug  
1294 distribution records.

1295       (7) PRESCRIPTION DRUG PURCHASE LIST.—

1296       ~~(b) Such portions of the information required pursuant to~~  
1297 ~~this subsection which are a trade secret, as defined in s.~~  
1298 ~~812.081, shall be maintained by the department as trade secret~~  
1299 ~~information is required to be maintained under s. 499.051. This~~  
1300 ~~paragraph is subject to the Open Government Sunset Review Act in~~

1301 ~~accordance with s. 119.15 and shall stand repealed on October 2,~~  
 1302 ~~2021, unless reviewed and saved from repeal through reenactment~~  
 1303 ~~by the Legislature.~~

1304 Section 40. Paragraph (g) of subsection (1) of section  
 1305 499.05, Florida Statutes, is amended to read:

1306 499.05 Rules.—

1307 (1) The department shall adopt rules to implement and  
 1308 enforce this chapter with respect to:

1309 (g) Inspections and investigations conducted under s.  
 1310 499.051 or s. 499.93, ~~and the identification of information~~  
 1311 ~~claimed to be a trade secret and exempt from the public records~~  
 1312 ~~law as provided in s. 499.051(7).~~

1313 Section 41. Paragraph (b) of subsection (7) of section  
 1314 499.051, Florida Statutes, is amended to read:

1315 499.051 Inspections and investigations.—

1316 (7)

1317 ~~(b) Information that constitutes a trade secret, as~~  
 1318 ~~defined in s. 812.081, contained in the complaint or obtained by~~  
 1319 ~~the department pursuant to the investigation must remain~~  
 1320 ~~confidential and exempt from s. 119.07(1) and s. 24(a), Art. I~~  
 1321 ~~of the State Constitution as long as the information is held by~~  
 1322 ~~the department. This paragraph is subject to the Open Government~~  
 1323 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~  
 1324 ~~repealed on October 2, 2021, unless reviewed and saved from~~  
 1325 ~~repeal through reenactment by the Legislature.~~

1326 Section 42. Section 499.931, Florida Statutes, is  
 1327 repealed.

1328 Section 43. Paragraph (d) of subsection (11) of section  
 1329 501.171, Florida Statutes, is amended to read:

1330 501.171 Security of confidential personal information.—

1331 (11) PUBLIC RECORDS EXEMPTION.—

1332 (d) For purposes of this subsection, the term "proprietary  
 1333 information" means information that:

1334 1. Is owned or controlled by the covered entity.

1335 2. Is intended to be private and is treated by the covered  
 1336 entity as private because disclosure would harm the covered  
 1337 entity or its business operations.

1338 3. Has not been disclosed except as required by law or a  
 1339 private agreement that provides that the information will not be  
 1340 released to the public.

1341 4. Is not publicly available or otherwise readily  
 1342 ascertainable through proper means from another source in the  
 1343 same configuration as received by the department.

1344 5. Includes+

1345 ~~a. Trade secrets as defined in s. 688.002.~~

1346 ~~b.~~ competitive interests, the disclosure of which would  
 1347 impair the competitive business of the covered entity who is the  
 1348 subject of the information.

1349 Section 44. Section 502.222, Florida Statutes, is  
 1350 repealed.

1351 Section 45. Paragraph (b) of subsection (1) of section  
 1352 517.2015, Florida Statutes, is amended to read:

1353 517.2015 Confidentiality of information relating to  
 1354 investigations and examinations.—

1355 (1)

1356 (b) Except as necessary for the office to enforce the  
 1357 provisions of this chapter, a consumer complaint and other  
 1358 information relative to an investigation or examination shall  
 1359 remain confidential and exempt from s. 119.07(1) after the  
 1360 investigation or examination is completed or ceases to be active  
 1361 to the extent disclosure would:

1362 1. Jeopardize the integrity of another active  
 1363 investigation or examination.

1364 2. Reveal the name, address, telephone number, social  
 1365 security number, or any other identifying number or information  
 1366 of any complainant, customer, or account holder.

1367 3. Disclose the identity of a confidential source.

1368 4. Disclose investigative techniques or procedures.

1369 ~~5. Reveal a trade secret as defined in s. 688.002.~~

1370 Section 46. Paragraph (b) of subsection (1) of section  
 1371 520.9965, Florida Statutes, is amended to read:

1372 520.9965 Confidentiality of information relating to  
 1373 investigations and examinations.—

1374 (1)

1375 (b) Except as necessary for the office to enforce the

1376 provisions of this chapter, a consumer complaint and other  
 1377 information relative to an investigation or examination shall  
 1378 remain confidential and exempt from s. 119.07(1) after the  
 1379 investigation or examination is completed or ceases to be active  
 1380 to the extent disclosure would:

1381 1. Jeopardize the integrity of another active  
 1382 investigation or examination.

1383 2. Reveal the name, address, telephone number, social  
 1384 security number, or any other identifying number or information  
 1385 of any complainant, customer, or account holder.

1386 3. Disclose the identity of a confidential source.

1387 4. Disclose investigative techniques or procedures.

1388 ~~5. Reveal a trade secret as defined in s. 688.002.~~

1389 Section 47. Subsection (2) of section 526.311, Florida  
 1390 Statutes, is amended to read:

1391 526.311 Enforcement; civil penalties; injunctive relief.-

1392 (2) The Department of Agriculture and Consumer Services  
 1393 shall investigate any complaints regarding violations of this  
 1394 act and may request in writing the production of documents and  
 1395 records as part of its investigation of a complaint. If the  
 1396 person upon whom such request was made fails to produce the  
 1397 documents or records within 30 days after the date of the  
 1398 request, the department, through the department's office of  
 1399 general counsel, may issue and serve a subpoena to compel the  
 1400 production of such documents and records. If any person shall

1401 refuse to comply with a subpoena issued under this section, the  
 1402 department may petition a court of competent jurisdiction to  
 1403 enforce the subpoena and assess such sanctions as the court may  
 1404 direct. Refiners shall afford the department reasonable access  
 1405 to the refiners' posted terminal price. Any records, documents,  
 1406 papers, maps, books, tapes, photographs, files, sound  
 1407 recordings, or other business material, regardless of form or  
 1408 characteristics, obtained by the department are confidential and  
 1409 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
 1410 of the State Constitution while the investigation is pending. At  
 1411 the conclusion of an investigation, any matter determined by the  
 1412 department or by a judicial or administrative body, federal or  
 1413 state, to be ~~a trade secret or~~ proprietary confidential business  
 1414 information held by the department pursuant to such  
 1415 investigation shall be considered confidential and exempt from  
 1416 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 1417 Constitution. Such materials may be used in any administrative  
 1418 or judicial proceeding so long as the confidential or  
 1419 proprietary nature of the material is maintained.

1420       Section 48. Paragraph (e) of subsection (1) of section  
 1421 548.062, Florida Statutes, is amended to read:

1422       548.062 Public records exemption.—

1423       (1) As used in this section, the term "proprietary  
 1424 confidential business information" means information that:

1425       (e) Concerns any of the following:

- 1426           1. The number of ticket sales for a match;
- 1427           2. The amount of gross receipts after a match;
- 1428           ~~3. A trade secret, as defined in s. 688.002;~~
- 1429           3.4. Business plans;
- 1430           4.5. Internal auditing controls and reports of internal
- 1431 auditors; or
- 1432           5.6. Reports of external auditors.

1433           Section 49. Paragraph (a) of subsection (1) of section

1434 556.113, Florida Statutes, is amended to read:

1435           556.113 Sunshine State One-Call of Florida, Inc.; public

1436 records exemption.—

1437           (1) As used in this section, the term "proprietary

1438 confidential business information" means information provided

1439 by:

1440           (a) A member operator which is a map, plan, facility

1441 location diagram, internal damage investigation report or

1442 analysis, or dispatch methodology, ~~or trade secret as defined in~~

1443 ~~s. 688.002~~, or which describes the exact location of a utility

1444 underground facility or the protection, repair, or restoration

1445 thereof, and:

1446           1. Is intended to be and is treated by the member operator

1447 as confidential;

1448           2. The disclosure of which would likely be used by a

1449 competitor to harm the business interests of the member operator

1450 or could be used for the purpose of inflicting damage on

1451 | underground facilities; and

1452 |         3. Is not otherwise readily ascertainable or publicly  
 1453 | available by proper means by other persons from another source  
 1454 | in the same configuration as provided to Sunshine State One-Call  
 1455 | of Florida, Inc.

1456 |         Section 50. Paragraph (b) of subsection (2) of section  
 1457 | 559.5558, Florida Statutes, is amended to read:

1458 |             559.5558 Public records exemption; investigations and  
 1459 | examinations.—

1460 |             (2)

1461 |             (b) Information made confidential and exempt pursuant to  
 1462 | this section is no longer confidential and exempt once the  
 1463 | investigation or examination is completed or ceases to be active  
 1464 | unless disclosure of the information would:

1465 |             1. Jeopardize the integrity of another active  
 1466 | investigation or examination.

1467 |             2. Reveal the personal identifying information of a  
 1468 | consumer, unless the consumer is also the complainant. A  
 1469 | complainant's personal identifying information is subject to  
 1470 | disclosure after the investigation or examination is completed  
 1471 | or ceases to be active. However, a complainant's personal  
 1472 | financial and health information remains confidential and  
 1473 | exempt.

1474 |             3. Reveal the identity of a confidential source.

1475 |             4. Reveal investigative or examination techniques or

1476 | procedures.

1477 |       5. ~~Reveal trade secrets, as defined in s. 688.002.~~

1478 |       Section 51. Paragraph (c) of subsection (3) of section  
1479 | 559.9285, Florida Statutes, is amended to read:

1480 |       559.9285 Certification of business activities.—

1481 |       (3) The department shall specify by rule the form of each  
1482 | certification under this section which shall include the  
1483 | following information:

1484 |       (c) The legal name, any trade names or fictitious names,  
1485 | mailing address, physical address, telephone number or numbers,  
1486 | facsimile number or numbers, and all Internet and electronic  
1487 | contact information of every other commercial entity with which  
1488 | the certifying party engages in business or commerce that is  
1489 | related in any way to the certifying party's business or  
1490 | commerce with any terrorist state. The information disclosed  
1491 | pursuant to this paragraph does not constitute customer lists  
1492 | or, customer names, ~~or trade secrets~~ protected under s.  
1493 | 570.544(8) or trade secrets protected under s. 688.01.

1494 |       Section 52. Subsection (2) of section 560.129, Florida  
1495 | Statutes, is amended to read:

1496 |       560.129 Confidentiality.—

1497 |       (2) All information obtained by the office in the course  
1498 | of its investigation or examination ~~which is a trade secret, as~~  
1499 | ~~defined in s. 688.002, or~~ which is personal financial  
1500 | information shall remain confidential and exempt from s.

1501 119.07(1) and s. 24(a), Art. I of the State Constitution. If any  
 1502 administrative, civil, or criminal proceeding against a money  
 1503 services business, its authorized vendor, or an affiliated party  
 1504 is initiated and the office seeks to use matter that a licensee  
 1505 believes to be ~~a trade secret or~~ personal financial information,  
 1506 such records shall be subject to an in camera review by the  
 1507 administrative law judge, if the matter is before the Division  
 1508 of Administrative Hearings, or a judge of any court of this  
 1509 state, any other state, or the United States, as appropriate,  
 1510 for the purpose of determining if the matter is ~~a trade secret~~  
 1511 ~~or is~~ personal financial information. ~~If it is determined that~~  
 1512 ~~the matter is a trade secret, the matter shall remain~~  
 1513 ~~confidential.~~ If it is determined that the matter is personal  
 1514 financial information, the matter shall remain confidential  
 1515 unless the administrative law judge or judge determines that, in  
 1516 the interests of justice, the matter should become public.

1517 Section 53. Subsection (3) of section 570.48, Florida  
 1518 Statutes, is amended to read:

1519 570.48 Division of Fruit and Vegetables; powers and  
 1520 duties; records.—The duties of the Division of Fruit and  
 1521 Vegetables include, but are not limited to:

1522 (3) Maintaining the records of the division. The records  
 1523 of the division are public records, ; ~~however, trade secrets as~~  
 1524 ~~defined in s. 812.081 are confidential and exempt from s.~~  
 1525 ~~119.07(1) and s. 24(a), Art. I of the State Constitution. This~~

1526 ~~subsection is subject to the Open Government Sunset Review Act~~  
 1527 ~~in accordance with s. 119.15 and shall stand repealed on October~~  
 1528 ~~2, 2021, unless reviewed and saved from repeal through~~  
 1529 ~~reenactment by the Legislature. This Section 688.01 may not be~~  
 1530 ~~construed to prohibit:~~

1531 ~~(a) A disclosure necessary to enforcement procedures.~~

1532 ~~(b) The department from releasing information to other~~  
 1533 ~~governmental agencies. Other governmental agencies that receive~~  
 1534 ~~confidential information from the department under this~~  
 1535 ~~subsection shall maintain the confidentiality of that~~  
 1536 ~~information.~~

1537 ~~(c)~~ the department or other agencies from compiling and  
 1538 publishing appropriate data regarding procedures, yield,  
 1539 recovery, quality, and related matters, provided such released  
 1540 data do not reveal by whom the activity to which the data relate  
 1541 was conducted.

1542 Section 54. Subsection (8) of section 570.544, Florida  
 1543 Statutes, is amended to read:

1544 570.544 Division of Consumer Services; director; powers;  
 1545 processing of complaints; records.—

1546 (8) The records of the Division of Consumer Services are  
 1547 public records. However, customer lists and, customer names, ~~and~~  
 1548 ~~trade secrets~~ are confidential and exempt from the provisions of  
 1549 s. 119.07(1). Disclosure necessary to enforcement procedures  
 1550 does not violate this prohibition.

1551 Section 55. Subsection (2) of section 573.123, Florida  
 1552 Statutes, is amended to read:

1553 573.123 Maintenance and production of records.—

1554 ~~(2) Information that, if disclosed, would reveal a trade~~  
 1555 ~~secret, as defined in s. 812.081, of any person subject to a~~  
 1556 ~~marketing order is confidential and exempt from s. 119.07(1) and~~  
 1557 ~~s. 24(a), Art. I of the State Constitution and may not be~~  
 1558 ~~disclosed except to an attorney who provides legal advice to the~~  
 1559 ~~division about enforcing a marketing order or by court order. A~~  
 1560 ~~person who receives confidential information under this~~  
 1561 ~~subsection shall maintain the confidentiality of that~~  
 1562 ~~information. This subsection is subject to the Open Government~~  
 1563 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~  
 1564 ~~repealed on October 2, 2021, unless reviewed and saved from~~  
 1565 ~~repeal through reenactment by the Legislature.~~

1566 Section 56. Section 581.199, Florida Statutes, is  
 1567 repealed.

1568 Section 57. Paragraph (b) of subsection (8) of section  
 1569 601.10, Florida Statutes, is amended to read:

1570 601.10 Powers of the Department of Citrus.—The department  
 1571 shall have and shall exercise such general and specific powers  
 1572 as are delegated to it by this chapter and other statutes of the  
 1573 state, which powers shall include, but are not limited to, the  
 1574 following:

1575 (8)

1576 ~~(b) Any information provided to the department which~~  
 1577 ~~constitutes a trade secret as defined in s. 812.081 is~~  
 1578 ~~confidential and exempt from s. 119.07(1) and s. 24(a), Art. I~~  
 1579 ~~of the State Constitution. This paragraph is subject to the Open~~  
 1580 ~~Government Sunset Review Act in accordance with s. 119.15 and~~  
 1581 ~~shall stand repealed on October 2, 2021, unless reviewed and~~  
 1582 ~~saved from repeal through reenactment by the Legislature.~~

1583 Section 58. Paragraph (d) of subsection (7) of section  
 1584 601.15, Florida Statutes, is amended to read:

1585 601.15 Advertising campaign; methods of conducting;  
 1586 assessments; emergency reserve fund; citrus research.-

1587 (7) All assessments levied and collected under this  
 1588 chapter shall be paid into the State Treasury on or before the  
 1589 15th day of each month. Such moneys shall be accounted for in a  
 1590 special fund to be designated as the Florida Citrus Advertising  
 1591 Trust Fund, and all moneys in such fund are appropriated to the  
 1592 department for the following purposes:

1593 (d)1. The pro rata portion of moneys allocated to each  
 1594 type of citrus product in noncommodity programs shall be used by  
 1595 the department to encourage substantial increases in the  
 1596 effectiveness, frequency, and volume of noncommodity  
 1597 advertising, merchandising, publicity, and sales promotion of  
 1598 such citrus products through rebates and incentive payments to  
 1599 handlers and trade customers for these activities. The  
 1600 department shall adopt rules providing for the use of such

1601 moneys. The rules shall establish alternate incentive programs,  
 1602 including at least one incentive program for product sold under  
 1603 advertised brands, one incentive program for product sold under  
 1604 private label brands, and one incentive program for product sold  
 1605 in bulk. For each incentive program, the rules must establish  
 1606 eligibility and performance requirements and must provide  
 1607 appropriate limitations on amounts payable to a handler or trade  
 1608 customer for a particular season. Such limitations may relate to  
 1609 the amount of citrus assessments levied and collected on the  
 1610 citrus product handled by such handler or trade customer during  
 1611 a 12-month representative period.

1612         2. The department may require from participants in  
 1613 noncommodity advertising and promotional programs commercial  
 1614 information necessary to determine eligibility for and  
 1615 performance in such programs. ~~Any information required which~~  
 1616 ~~constitutes a trade secret as defined in s. 812.081 is~~  
 1617 ~~confidential and exempt from s. 119.07(1) and s. 24(a), Art. I~~  
 1618 ~~of the State Constitution. This subparagraph is subject to the~~  
 1619 ~~Open Government Sunset Review Act in accordance with s. 119.15~~  
 1620 ~~and shall stand repealed on October 2, 2021, unless reviewed and~~  
 1621 ~~saved from repeal through reenactment by the Legislature.~~

1622         Section 59. Paragraph (c) of subsection (8) of section  
 1623 601.152, Florida Statutes, is amended to read:

1624         601.152 Special marketing orders.—

1625         (8)

1626 (c)~~1~~. Every handler shall, at such times as the department  
 1627 may require, file with the department a return, not under oath,  
 1628 on forms to be prescribed and furnished by the department,  
 1629 certified as true and correct, stating the quantity of the type,  
 1630 variety, and form of citrus fruit or citrus product specified in  
 1631 the marketing order first handled in the primary channels of  
 1632 trade in the state by such handler during the period of time  
 1633 specified in the marketing order. Such returns must contain any  
 1634 further information deemed by the department to be reasonably  
 1635 necessary to properly administer or enforce this section or any  
 1636 marketing order implemented under this section.

1637 ~~2. Information that, if disclosed, would reveal a trade~~  
 1638 ~~secret, as defined in s. 812.081, of any person subject to a~~  
 1639 ~~marketing order is confidential and exempt from s. 119.07(1) and~~  
 1640 ~~s. 24(a), Art. I of the State Constitution. This subparagraph is~~  
 1641 ~~subject to the Open Government Sunset Review Act in accordance~~  
 1642 ~~with s. 119.15 and shall stand repealed on October 2, 2021,~~  
 1643 ~~unless reviewed and saved from repeal through reenactment by the~~  
 1644 ~~Legislature.~~

1645 Section 60. Section 601.76, Florida Statutes, is amended  
 1646 to read:

1647 601.76 Manufacturer to furnish formula and other  
 1648 information.—Any formula required to be filed with the  
 1649 Department of Agriculture ~~shall be deemed a trade secret as~~  
 1650 ~~defined in s. 812.081,~~ is confidential and exempt from s.

1651 119.07(1) and s. 24(a), Art. I of the State Constitution, and  
 1652 may be divulged only to the Department of Agriculture or to its  
 1653 duly authorized representatives or upon court order when  
 1654 necessary in the enforcement of this law. A person who receives  
 1655 such a formula from the Department of Agriculture under this  
 1656 section shall maintain the confidentiality of the formula. ~~This~~  
 1657 ~~section is subject to the Open Government Sunset Review Act in~~  
 1658 ~~accordance with s. 119.15 and shall stand repealed on October 2,~~  
 1659 ~~2021, unless reviewed and saved from repeal through reenactment~~  
 1660 ~~by the Legislature.~~

1661 Section 61. Subsection (6) of section 607.0505, Florida  
 1662 Statutes, is amended to read:

1663 607.0505 Registered agent; duties.-

1664 (6) Information provided to, and records and  
 1665 transcriptions of testimony obtained by, the Department of Legal  
 1666 Affairs pursuant to this section are confidential and exempt  
 1667 from the provisions of s. 119.07(1) while the investigation is  
 1668 active. For purposes of this section, an investigation shall be  
 1669 considered "active" while such investigation is being conducted  
 1670 with a reasonable, good faith belief that it may lead to the  
 1671 filing of an administrative, civil, or criminal proceeding. An  
 1672 investigation does not cease to be active so long as the  
 1673 Department of Legal Affairs is proceeding with reasonable  
 1674 dispatch and there is a good faith belief that action may be  
 1675 initiated by the Department of Legal Affairs or other

1676 administrative or law enforcement agency. Except for active  
 1677 criminal intelligence or criminal investigative information, as  
 1678 defined in s. 119.011, and information which, if disclosed,  
 1679 ~~would reveal a trade secret, as defined in s. 688.002, or~~ would  
 1680 jeopardize the safety of an individual, all information,  
 1681 records, and transcriptions become public record when the  
 1682 investigation is completed or ceases to be active. The  
 1683 Department of Legal Affairs shall not disclose confidential  
 1684 information, records, or transcriptions of testimony except  
 1685 pursuant to the authorization by the Attorney General in any of  
 1686 the following circumstances:

1687 (a) To a law enforcement agency participating in or  
 1688 conducting a civil investigation under chapter 895, or  
 1689 participating in or conducting a criminal investigation.

1690 (b) In the course of filing, participating in, or  
 1691 conducting a judicial proceeding instituted pursuant to this  
 1692 section or chapter 895.

1693 (c) In the course of filing, participating in, or  
 1694 conducting a judicial proceeding to enforce an order or judgment  
 1695 entered pursuant to this section or chapter 895.

1696 (d) In the course of a criminal or civil proceeding.

1697  
 1698 A person or law enforcement agency which receives any  
 1699 information, record, or transcription of testimony that has been  
 1700 made confidential by this subsection shall maintain the

1701 confidentiality of such material and shall not disclose such  
 1702 information, record, or transcription of testimony except as  
 1703 provided for herein. Any person who willfully discloses any  
 1704 information, record, or transcription of testimony that has been  
 1705 made confidential by this subsection, except as provided for  
 1706 herein, is guilty of a misdemeanor of the first degree,  
 1707 punishable as provided in s. 775.082 or s. 775.083. If any  
 1708 information, record, or testimony obtained pursuant to  
 1709 subsection (2) is offered in evidence in any judicial  
 1710 proceeding, the court may, in its discretion, seal that portion  
 1711 of the record to further the policies of confidentiality set  
 1712 forth herein.

1713           Section 62. Subsection (6) of section 617.0503, Florida  
 1714 Statutes, is amended to read:

1715           617.0503 Registered agent; duties; confidentiality of  
 1716 investigation records.—

1717           (6) Information provided to, and records and  
 1718 transcriptions of testimony obtained by, the Department of Legal  
 1719 Affairs pursuant to this section are confidential and exempt  
 1720 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the  
 1721 State Constitution while the investigation is active. For  
 1722 purposes of this section, an investigation shall be considered  
 1723 "active" while such investigation is being conducted with a  
 1724 reasonable, good faith belief that it may lead to the filing of  
 1725 an administrative, civil, or criminal proceeding. An

1726 investigation does not cease to be active so long as the  
 1727 department is proceeding with reasonable dispatch and there is a  
 1728 good faith belief that action may be initiated by the department  
 1729 or other administrative or law enforcement agency. Except for  
 1730 active criminal intelligence or criminal investigative  
 1731 information, as defined in s. 119.011, and information which, if  
 1732 disclosed, ~~would reveal a trade secret, as defined in s.~~  
 1733 ~~688.002, or~~ would jeopardize the safety of an individual, all  
 1734 information, records, and transcriptions become available to the  
 1735 public when the investigation is completed or ceases to be  
 1736 active. The department shall not disclose confidential  
 1737 information, records, or transcriptions of testimony except  
 1738 pursuant to authorization by the Attorney General in any of the  
 1739 following circumstances:

1740 (a) To a law enforcement agency participating in or  
 1741 conducting a civil investigation under chapter 895, or  
 1742 participating in or conducting a criminal investigation.

1743 (b) In the course of filing, participating in, or  
 1744 conducting a judicial proceeding instituted pursuant to this  
 1745 section or chapter 895.

1746 (c) In the course of filing, participating in, or  
 1747 conducting a judicial proceeding to enforce an order or judgment  
 1748 entered pursuant to this section or chapter 895.

1749 (d) In the course of a criminal proceeding.  
 1750

1751 A person or law enforcement agency that receives any  
 1752 information, record, or transcription of testimony that has been  
 1753 made confidential by this subsection shall maintain the  
 1754 confidentiality of such material and shall not disclose such  
 1755 information, record, or transcription of testimony except as  
 1756 provided for herein. Any person who willfully discloses any  
 1757 information, record, or transcription of testimony that has been  
 1758 made confidential by this subsection, except as provided for in  
 1759 this subsection, commits a misdemeanor of the first degree,  
 1760 punishable as provided in s. 775.082 or s. 775.083. If any  
 1761 information, record, or testimony obtained pursuant to  
 1762 subsection (2) is offered in evidence in any judicial  
 1763 proceeding, the court may, in its discretion, seal that portion  
 1764 of the record to further the policies of confidentiality set  
 1765 forth in this subsection.

1766 Section 63. Subsection (4) of section 624.307, Florida  
 1767 Statutes, is amended to read:

1768 624.307 General powers; duties.—

1769 (4) The department and office may each collect, propose,  
 1770 publish, and disseminate information relating to the subject  
 1771 matter of any duties imposed upon it by law. Notwithstanding any  
 1772 other provision of law, information reported to and collected by  
 1773 the office may be made available on an aggregate basis. The  
 1774 office may report, publish, or otherwise make available such  
 1775 information from all insurers on an aggregate basis by line of

1776 business and by county, even if marked trade secret pursuant to  
 1777 s. 688.01, but shall otherwise maintain trade secret  
 1778 confidentiality in accordance with s. 688.01.

1779 Section 64. Subsection (4) is added to section 624.315,  
 1780 Florida Statutes, to read:

1781 624.315 Department; annual report.—

1782 (4) Notwithstanding any other provision of law, the office  
 1783 may make the information in subsection (2) available on an  
 1784 aggregate basis. The office may include such statistical  
 1785 information from all insurers on an aggregate basis by line of  
 1786 business and by county, even if marked trade secret pursuant to  
 1787 s. 688.01, but shall otherwise maintain trade secret  
 1788 confidentiality in accordance with s. 688.01.

1789 Section 65. Paragraph (c) of subsection (1) and subsection  
 1790 (5) of section 624.4212, Florida Statutes, are amended to read:

1791 624.4212 Confidentiality of proprietary business and other  
 1792 information.—

1793 (1) As used in this section, the term "proprietary  
 1794 business information" means information, regardless of form or  
 1795 characteristics, which is owned or controlled by an insurer, or  
 1796 a person or an affiliated person who seeks acquisition of  
 1797 controlling stock in a domestic stock insurer or controlling  
 1798 company, and which:

1799 (c) Includes:

1800 ~~1. Trade secrets as defined in s. 688.002 which comply~~

1801 ~~with s. 624.4213.~~

1802        1.2. Information relating to competitive interests, the  
 1803 disclosure of which would impair the competitive business of the  
 1804 provider of the information.

1805        2.3. The source, nature, and amount of the consideration  
 1806 used or to be used in carrying out a merger or other acquisition  
 1807 of control in the ordinary course of business, including the  
 1808 identity of the lender, if the person filing a statement  
 1809 regarding consideration so requests.

1810        3.4. Information relating to bids or other contractual  
 1811 data, the disclosure of which would impair the efforts of the  
 1812 insurer or its affiliates to contract for goods or services on  
 1813 favorable terms.

1814        4.5. Internal auditing controls and reports of internal  
 1815 auditors.

1816        (5) The office may disclose information made confidential  
 1817 and exempt under this section or s. 688.01:

1818            (a) If the insurer to which it pertains gives prior  
 1819 written consent;

1820            (b) Pursuant to a court order;

1821            (c) To the Actuarial Board for Counseling and Discipline  
 1822 upon a request stating that the information is for the purpose  
 1823 of professional disciplinary proceedings and specifying  
 1824 procedures satisfactory to the office for preserving the  
 1825 confidentiality of the information;

1826 (d) To other states, federal and international agencies,  
 1827 the National Association of Insurance Commissioners and its  
 1828 affiliates and subsidiaries, and state, federal, and  
 1829 international law enforcement authorities, including members of  
 1830 a supervisory college described in s. 628.805 if the recipient  
 1831 agrees in writing to maintain the confidential and exempt status  
 1832 of the document, material, or other information and has  
 1833 certified in writing its legal authority to maintain such  
 1834 confidentiality; or

1835 (e) For the purpose of aggregating information on an  
 1836 industrywide basis and disclosing the information to the public  
 1837 only if the specific identities of the insurers, or persons or  
 1838 affiliated persons, are not revealed.

1839 Section 66. Section 624.4213, Florida Statutes, is  
 1840 repealed.

1841 Section 67. Paragraph (d) of subsection (1) of section  
 1842 626.84195, Florida Statutes, is amended to read:

1843 626.84195 Confidentiality of information supplied by title  
 1844 insurance agencies and insurers.—

1845 (1) As used in this section, the term "proprietary  
 1846 business information" means information that:

1847 (d) Concerns:

1848 1. Business plans;

1849 2. Internal auditing controls and reports of internal  
 1850 auditors;

1851 3. Reports of external auditors for privately held  
 1852 companies; or  
 1853 ~~4. Trade secrets, as defined in s. 688.002; or~~  
 1854 4.5. Financial information, including revenue data, loss  
 1855 expense data, gross receipts, taxes paid, capital investment,  
 1856 and employee wages.

1857 Section 68. Subsection (2) of section 626.884, Florida  
 1858 Statutes, is amended to read:

1859 626.884 Maintenance of records by administrator; access;  
 1860 confidentiality.—

1861 (2) The office shall have access to books and records  
 1862 maintained by the administrator for the purpose of examination,  
 1863 audit, and inspection. ~~Information contained in such books and~~  
 1864 ~~records is confidential and exempt from the provisions of s.~~  
 1865 ~~119.07(1) if the disclosure of such information would reveal a~~  
 1866 ~~trade secret as defined in s. 688.002. However,~~ The office may  
 1867 use such information in any proceeding instituted against the  
 1868 administrator.

1869 Section 69. Paragraph (a) of subsection (1) of section  
 1870 626.9936, Florida Statutes, is amended to read:

1871 626.9936 Access to records.—

1872 (1) Notwithstanding subsections (1) and (2) of Article  
 1873 VIII, subsection (2) of Article X, and subsection (6) of Article  
 1874 XII of the Interstate Insurance Product Regulation Compact, a  
 1875 request by a resident of this state for public inspection and

1876 copying of information, data, or official records that includes+  
 1877 (a) An insurer's trade secrets shall be referred to the  
 1878 commissioner who shall respond to the request, with the  
 1879 cooperation and assistance of the commission, in accordance with  
 1880 s. 688.01 ~~s. 624.4213~~; or

1881 Section 70. Paragraph (g) of subsection (3) of section  
 1882 627.0628, Florida Statutes, is amended to read:

1883 627.0628 Florida Commission on Hurricane Loss Projection  
 1884 Methodology; public records exemption; public meetings  
 1885 exemption.-

1886 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.-

1887 ~~(g)1. A trade secret, as defined in s. 688.002, which is  
 1888 used in designing and constructing a hurricane or flood loss  
 1889 model and which is provided pursuant to this section, by a  
 1890 private company, to the commission, office, or consumer advocate  
 1891 appointed pursuant to s. 627.0613 is confidential and exempt  
 1892 from s. 119.07(1) and s. 24(a), Art. I of the State  
 1893 Constitution.~~

1894 (g)1.2.a. That portion of a meeting of the commission or  
 1895 of a rate proceeding on an insurer's rate filing at which a  
 1896 trade secret made confidential and exempt pursuant to s. 688.01  
 1897 ~~by this paragraph~~ is discussed is exempt from s. 286.011 and s.  
 1898 24(b), Art. I of the State Constitution. The closed meeting must  
 1899 be recorded, and no portion of the closed meeting may be off the  
 1900 record.

1901            ~~2.b.~~ The recording of a closed portion of a meeting is  
 1902 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 1903 Constitution.

1904            Section 71. Paragraph (a) of subsection (11) of section  
 1905 627.3518, Florida Statutes, is amended to read:

1906            627.3518 Citizens Property Insurance Corporation  
 1907 policyholder eligibility clearinghouse program.—The purpose of  
 1908 this section is to provide a framework for the corporation to  
 1909 implement a clearinghouse program by January 1, 2014.

1910            (11) Proprietary business information provided to the  
 1911 corporation's clearinghouse by insurers with respect to  
 1912 identifying and selecting risks for an offer of coverage is  
 1913 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 1914 of the State Constitution.

1915            (a) As used in this subsection, the term "proprietary  
 1916 business information" means information, regardless of form or  
 1917 characteristics, which is owned or controlled by an insurer and:

1918            1. Is identified by the insurer as proprietary business  
 1919 information and is intended to be and is treated by the insurer  
 1920 as private in that the disclosure of the information would cause  
 1921 harm to the insurer, an individual, or the company's business  
 1922 operations and has not been disclosed unless disclosed pursuant  
 1923 to a statutory requirement, an order of a court or  
 1924 administrative body, or a private agreement that provides that  
 1925 the information will not be released to the public;

1926           2. Is not otherwise readily ascertainable or publicly  
 1927 available by proper means by other persons from another source  
 1928 in the same configuration as provided to the clearinghouse; and

1929           3. Includes+

1930           ~~a. Trade secrets, as defined in s. 688.002.~~

1931           ~~b.~~ information relating to competitive interests, the  
 1932 disclosure of which would impair the competitive business of the  
 1933 provider of the information.

1934

1935 Proprietary business information may be found in underwriting  
 1936 criteria or instructions which are used to identify and select  
 1937 risks through the program for an offer of coverage and are  
 1938 shared with the clearinghouse to facilitate the shopping of  
 1939 risks with the insurer.

1940           Section 72. Subsections (5) through (14) of section  
 1941 655.057, Florida Statutes, are renumbered as subsections (4)  
 1942 through (13), respectively, and present subsections (4), (5),  
 1943 and (14) are amended to read:

1944           655.057 Records; limited restrictions upon public access.-

1945           ~~(4) Except as otherwise provided in this section and~~  
 1946 ~~except for those portions that are otherwise public record,~~  
 1947 ~~trade secrets as defined in s. 688.002 which comply with s.~~  
 1948 ~~655.0591 and which are held by the office in accordance with its~~  
 1949 ~~statutory duties with respect to the financial institutions~~  
 1950 ~~codes are confidential and exempt from s. 119.07(1) and s.~~

1951 | ~~24(a), Art. I of the State Constitution.~~  
 1952 |        ~~(4)(5)~~ Neither this section nor s. 688.01 prevents ~~does~~  
 1953 | ~~not prevent~~ or restricts ~~restrict~~:  
 1954 |        (a) Publishing reports that are required to be submitted  
 1955 | to the office pursuant to s. 655.045(2) or required by  
 1956 | applicable federal statutes or regulations to be published.  
 1957 |        (b) Furnishing records or information to any other state,  
 1958 | federal, or foreign agency responsible for the regulation or  
 1959 | supervision of financial institutions.  
 1960 |        (c) Disclosing or publishing summaries of the condition of  
 1961 | financial institutions and general economic and similar  
 1962 | statistics and data, provided that the identity of a particular  
 1963 | financial institution is not disclosed.  
 1964 |        (d) Reporting any suspected criminal activity, with  
 1965 | supporting documents and information, to appropriate law  
 1966 | enforcement and prosecutorial agencies.  
 1967 |        (e) Furnishing information upon request to the Chief  
 1968 | Financial Officer or the Division of Treasury of the Department  
 1969 | of Financial Services regarding the financial condition of any  
 1970 | financial institution that is, or has applied to be, designated  
 1971 | as a qualified public depository pursuant to chapter 280.  
 1972 |        (f) Furnishing information to Federal Home Loan Banks  
 1973 | regarding its member institutions pursuant to an information  
 1974 | sharing agreement between the Federal Home Loan Banks and the  
 1975 | office.

1976  
 1977 Any confidential information or records obtained from the office  
 1978 pursuant to this subsection shall be maintained as confidential  
 1979 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 1980 Constitution.

1981 (13)~~(14)~~ Subsections (1), (2), ~~(5)~~, and (8) ~~(9)~~ are  
 1982 subject to the Open Government Sunset Review Act in accordance  
 1983 with s. 119.15 and are repealed on October 2, 2022, unless  
 1984 reviewed and saved from repeal through reenactment by the  
 1985 Legislature.

1986 Section 73. Section 655.0591, Florida Statutes, is  
 1987 repealed.

1988 Section 74. Subsection (11) of section 663.533, Florida  
 1989 Statutes, is amended to read:

1990 663.533 Applicability of the financial institutions  
 1991 codes.—A qualified limited service affiliate is subject to the  
 1992 financial institutions codes. Without limiting the foregoing,  
 1993 the following provisions are applicable to a qualified limited  
 1994 service affiliate:

1995 (11) Section 688.01 ~~655.0591~~, relating to trade secret  
 1996 documents.

1997  
 1998 This section does not prohibit the office from investigating or  
 1999 examining an entity to ensure that it is not in violation of  
 2000 this chapter or applicable provisions of the financial

2001 institutions codes.

2002 Section 75. Section 721.071, Florida Statutes, is  
 2003 repealed.

2004 Section 76. Subsections (3) and (4) of section 815.04,  
 2005 Florida Statutes, are amended to read:

2006 815.04 Offenses against intellectual property; ~~public~~  
 2007 ~~records exemption.-~~

2008 ~~(3) Data, programs, or supporting documentation that is a~~  
 2009 ~~trade secret as defined in s. 812.081, that is held by an agency~~  
 2010 ~~as defined in chapter 119, and that resides or exists internal~~  
 2011 ~~or external to a computer, computer system, computer network, or~~  
 2012 ~~electronic device is confidential and exempt from the provisions~~  
 2013 ~~of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~  
 2014 ~~This subsection is subject to the Open Government Sunset Review~~  
 2015 ~~Act in accordance with s. 119.15 and shall stand repealed on~~  
 2016 ~~October 2, 2021, unless reviewed and saved from repeal through~~  
 2017 ~~reenactment by the Legislature.~~

2018 (3)(4) A person who willfully, knowingly, and without  
 2019 authorization discloses or takes data, programs, or supporting  
 2020 documentation that is a trade secret as defined in s. 812.081 ~~or~~  
 2021 ~~is confidential as provided by law~~ residing or existing internal  
 2022 or external to a computer, computer system, computer network, or  
 2023 electronic device commits an offense against intellectual  
 2024 property.

2025 Section 77. Section 815.045, Florida Statutes, is

2026 | repealed.

2027 |       Section 78. Subsection (2) of section 1004.22, Florida  
2028 | Statutes, is amended to read:

2029 |       1004.22 Divisions of sponsored research at state  
2030 | universities.—

2031 |       (2) The university shall set such policies to regulate the  
2032 | activities of the divisions of sponsored research as it may  
2033 | consider necessary to administer the research programs in a  
2034 | manner which assures efficiency and effectiveness, producing the  
2035 | maximum benefit for the educational programs and maximum service  
2036 | to the state. To this end, materials that relate to methods of  
2037 | manufacture or production, ~~potential trade secrets,~~ potentially  
2038 | patentable material, ~~actual~~ trade secrets, as defined in s.  
2039 | 688.01, business transactions, or proprietary information  
2040 | received, generated, ascertained, or discovered during the  
2041 | course of research conducted within the state universities shall  
2042 | be confidential and exempt from the provisions of s. 119.07(1),  
2043 | except that a division of sponsored research shall make  
2044 | available upon request the title and description of a research  
2045 | project, the name of the researcher, and the amount and source  
2046 | of funding provided for such project.

2047 |       Section 79. Paragraph (c) of subsection (2) and  
2048 | subsections (3), (4), and (7) of section 1004.30, Florida  
2049 | Statutes, are amended to read:

2050 |       1004.30 University health services support organization;

2051 confidentiality of information.-

2052 (2) The following university health services support  
 2053 organization's records and information are confidential and  
 2054 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
 2055 of the State Constitution:

2056 ~~(c) Trade secrets, as defined in s. 688.002, including~~  
 2057 ~~reimbursement methodologies and rates.~~

2058 (3) Any portion of a governing board or peer review panel  
 2059 or committee meeting during which a confidential and exempt  
 2060 contract, document, record, or marketing plan, ~~or trade secret,~~  
 2061 as provided for in subsection (2), or a confidential and exempt  
 2062 trade secret, as provided for in s. 688.01, is discussed is  
 2063 exempt from the provisions of s. 286.011 and s. 24(b), Art. I of  
 2064 the State Constitution.

2065 (4) Those portions of any public record, such as a tape  
 2066 recording, minutes, and notes, generated during that portion of  
 2067 a governing board or peer review panel or committee meeting  
 2068 which is closed to the public pursuant to this section, ~~which~~  
 2069 ~~contain information relating to contracts, documents, records,~~  
 2070 ~~marketing plans, or trade secrets which are made confidential~~  
 2071 ~~and exempt by this section,~~ are confidential and exempt from the  
 2072 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 2073 Constitution.

2074 (7) Those portions of any public record, such as a tape  
 2075 recording, minutes, or notes, generated during that portion of a

2076 governing board meeting at which negotiations for contracts for  
 2077 managed-care arrangements occur, are reported on, or are acted  
 2078 on by the governing board, which record is made confidential and  
 2079 exempt by subsection (4), shall become public records 2 years  
 2080 after the termination or completion of the term of the contract  
 2081 to which such negotiations relate or, if no contract was  
 2082 executed, 2 years after the termination of the negotiations.  
 2083 Notwithstanding paragraph (2)(a) and subsection (4), a  
 2084 university health services support organization must make  
 2085 available, upon request, the title and general description of a  
 2086 contract for managed-care arrangements, the names of the  
 2087 contracting parties, and the duration of the contract term. All  
 2088 contracts for managed-care arrangements which are made  
 2089 confidential and exempt by paragraph (2)(a), except those  
 2090 portions of any contract containing trade secrets which are made  
 2091 confidential and exempt by s. 688.01 ~~paragraph (2)(c)~~, shall  
 2092 become public 2 years after the termination or completion of the  
 2093 term of the contract.

2094 Section 80. Paragraph (b) of subsection (8) of section  
 2095 1004.43, Florida Statutes, is amended to read:

2096 1004.43 H. Lee Moffitt Cancer Center and Research  
 2097 Institute.—There is established the H. Lee Moffitt Cancer Center  
 2098 and Research Institute, a statewide resource for basic and  
 2099 clinical research and multidisciplinary approaches to patient  
 2100 care.

2101           (8)

2102           (b) Proprietary confidential business information is

2103 confidential and exempt from the provisions of s. 119.07(1) and

2104 s. 24(a), Art. I of the State Constitution. However, the Auditor

2105 General, the Office of Program Policy Analysis and Government

2106 Accountability, and the Board of Governors, pursuant to their

2107 oversight and auditing functions, must be given access to all

2108 proprietary confidential business information upon request and

2109 without subpoena and must maintain the confidentiality of

2110 information so received. As used in this paragraph, the term

2111 "proprietary confidential business information" means

2112 information, regardless of its form or characteristics, which is

2113 owned or controlled by the not-for-profit corporation or its

2114 subsidiaries; is intended to be and is treated by the not-for-

2115 profit corporation or its subsidiaries as private and the

2116 disclosure of which would harm the business operations of the

2117 not-for-profit corporation or its subsidiaries; has not been

2118 intentionally disclosed by the corporation or its subsidiaries

2119 unless pursuant to law, an order of a court or administrative

2120 body, a legislative proceeding pursuant to s. 5, Art. III of the

2121 State Constitution, or a private agreement that provides that

2122 the information may be released to the public; and which is

2123 information concerning:

2124           1. Internal auditing controls and reports of internal

2125 auditors;

2126           2. Matters reasonably encompassed in privileged attorney-  
2127 client communications;

2128           3. Contracts for managed-care arrangements, including  
2129 preferred provider organization contracts, health maintenance  
2130 organization contracts, and exclusive provider organization  
2131 contracts, and any documents directly relating to the  
2132 negotiation, performance, and implementation of any such  
2133 contracts for managed-care arrangements;

2134           4. Bids or other contractual data, banking records, and  
2135 credit agreements the disclosure of which would impair the  
2136 efforts of the not-for-profit corporation or its subsidiaries to  
2137 contract for goods or services on favorable terms;

2138           5. Information relating to private contractual data, the  
2139 disclosure of which would impair the competitive interest of the  
2140 provider of the information;

2141           6. Corporate officer and employee personnel information;

2142           7. Information relating to the proceedings and records of  
2143 credentialing panels and committees and of the governing board  
2144 of the not-for-profit corporation or its subsidiaries relating  
2145 to credentialing;

2146           8. Minutes of meetings of the governing board of the not-  
2147 for-profit corporation and its subsidiaries, except minutes of  
2148 meetings open to the public pursuant to subsection (9);

2149           9. Information that reveals plans for marketing services  
2150 that the corporation or its subsidiaries reasonably expect to be

2151 provided by competitors;  
 2152 10. Trade secrets as defined in s. 688.01 ~~s. 688.002~~,  
 2153 including:  
 2154 a. Information relating to methods of manufacture or  
 2155 production, ~~potential trade secrets~~, potentially patentable  
 2156 materials, or proprietary information received, generated,  
 2157 ascertained, or discovered during the course of research  
 2158 conducted by the not-for-profit corporation or its subsidiaries;  
 2159 and  
 2160 b. Reimbursement methodologies or rates;  
 2161 11. The identity of donors or prospective donors of  
 2162 property who wish to remain anonymous or any information  
 2163 identifying such donors or prospective donors. The anonymity of  
 2164 these donors or prospective donors must be maintained in the  
 2165 auditor's report; or  
 2166 12. Any information received by the not-for-profit  
 2167 corporation or its subsidiaries from an agency in this or  
 2168 another state or nation or the Federal Government which is  
 2169 otherwise exempt or confidential pursuant to the laws of this or  
 2170 another state or nation or pursuant to federal law.  
 2171  
 2172 As used in this paragraph, the term "managed care" means systems  
 2173 or techniques generally used by third-party payors or their  
 2174 agents to affect access to and control payment for health care  
 2175 services. Managed-care techniques most often include one or more

2176 of the following: prior, concurrent, and retrospective review of  
 2177 the medical necessity and appropriateness of services or site of  
 2178 services; contracts with selected health care providers;  
 2179 financial incentives or disincentives related to the use of  
 2180 specific providers, services, or service sites; controlled  
 2181 access to and coordination of services by a case manager; and  
 2182 payor efforts to identify treatment alternatives and modify  
 2183 benefit restrictions for high-cost patient care.

2184 Section 81. Paragraph (a) of subsection (2) of section  
 2185 1004.4472, Florida Statutes, is amended to read:

2186 1004.4472 Florida Institute for Human and Machine  
 2187 Cognition, Inc.; public records exemption; public meetings  
 2188 exemption.—

2189 (2) The following information held by the corporation or  
 2190 its subsidiary is confidential and exempt from s. 119.07(1) and  
 2191 s. 24(a), Art. I of the State Constitution:

2192 (a) Material relating to methods of manufacture or  
 2193 production, ~~potential trade secrets~~, patentable material, actual  
 2194 trade secrets as defined in s. 688.01 ~~s. 688.002~~ or proprietary  
 2195 information received, generated, ascertained, or discovered  
 2196 during the course of research conducted by or through the  
 2197 corporation or a subsidiary, and business transactions resulting  
 2198 from such research.

2199 Section 82. Subsection (2) of section 1004.78, Florida  
 2200 Statutes, is amended to read:

2201 1004.78 Technology transfer centers at Florida College  
 2202 System institutions.—

2203 (2) The Florida College System institution board of  
 2204 trustees shall set such policies to regulate the activities of  
 2205 the technology transfer center as it may consider necessary to  
 2206 effectuate the purposes of this section and to administer the  
 2207 programs of the center in a manner which assures efficiency and  
 2208 effectiveness, producing the maximum benefit for the educational  
 2209 programs and maximum service to the state. To this end,  
 2210 materials that relate to methods of manufacture or production,  
 2211 ~~potential trade secrets,~~ potentially patentable material, ~~actual~~  
 2212 trade secrets as defined in s. 688.01, business transactions, or  
 2213 proprietary information received, generated, ascertained, or  
 2214 discovered during the course of activities conducted within the  
 2215 Florida College System institutions shall be confidential and  
 2216 exempt from the provisions of s. 119.07(1), except that a  
 2217 Florida College System institution shall make available upon  
 2218 request the title and description of a project, the name of the  
 2219 investigator, and the amount and source of funding provided for  
 2220 such project.

2221 Section 83. Section 601.80, Florida Statutes, is amended  
 2222 to read:

2223 601.80 Unlawful to use uncertified coloring matter.—It is  
 2224 unlawful for any person to use on oranges or citrus hybrids any  
 2225 coloring matter which has not first received the approval of the

2226 Department of Agriculture ~~as provided under s. 601.76.~~

2227 Section 84. Subsection (11) of section 663.533, Florida  
 2228 Statutes, is amended to read:

2229 663.533 Applicability of the financial institutions  
 2230 codes.—A qualified limited service affiliate is subject to the  
 2231 financial institutions codes. Without limiting the foregoing,  
 2232 the following provisions are applicable to a qualified limited  
 2233 service affiliate:

2234 ~~(11) Section 655.0591, relating to trade secret documents.~~

2235

2236 This section does not prohibit the office from investigating or  
 2237 examining an entity to ensure that it is not in violation of  
 2238 this chapter or applicable provisions of the financial  
 2239 institutions codes.

2240 Section 85. Paragraph (c) of subsection (12) of section  
 2241 721.13, Florida Statutes, is amended to read:

2242 721.13 Management.—

2243 (12)

2244 (c) The managing entity shall maintain copies of all  
 2245 records, data, and information supporting the processes,  
 2246 analyses, procedures, and methods utilized by the managing  
 2247 entity in its determination to reserve accommodations of the  
 2248 timeshare plan pursuant to this subsection for a period of 5  
 2249 years from the date of such determination. In the event of an  
 2250 investigation by the division for failure of a managing entity

2251 to comply with this subsection, the managing entity shall make  
 2252 all such records, data, and information available to the  
 2253 division for inspection, ~~provided that if the managing entity~~  
 2254 ~~complies with the provisions of s. 721.071, any such records,~~  
 2255 ~~data, and information provided to the division shall constitute~~  
 2256 ~~a trade secret pursuant to that section.~~

2257 Section 86. Paragraphs (a) and (c) of subsection (3) of  
 2258 section 921.0022, Florida Statutes, are amended to read:

2259 921.0022 Criminal Punishment Code; offense severity  
 2260 ranking chart.—

2261 (3) OFFENSE SEVERITY RANKING CHART

2262 (a) LEVEL 1

2263

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount \$1,000 or more but less

2264

2265

2266

			than \$20,000.
2267	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
2268	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
2269	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
2270	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
2271	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
2272	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.

2273	322.212(5)(a)	3rd	False application for driver license or identification card.
2274	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
2275	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
2276	509.151(1)	3rd	Defraud an innkeeper, food or lodging value \$1,000 or more.
2277	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
2278	713.69	3rd	Tenant removes property upon which lien has accrued, value \$1,000 or more.
2279			

2280	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
2281	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
2282	<u>815.04(4)(a)</u> <del>815.04(5)(a)</del>	3rd	Offense against intellectual property (i.e., computer programs, data).
2283	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
2284	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
2285	826.01	3rd	Bigamy.
2286	828.122(3)	3rd	Fighting or baiting animals.

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2287	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
2288	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
2289	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
2290	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
2291	838.15(2)	3rd	Commercial bribe receiving.
2292	838.16	3rd	Commercial bribery.
	843.18	3rd	Fleeing by boat to elude a law enforcement officer.

2293	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
2294	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
2295	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
2296	849.25(2)	3rd	Engaging in bookmaking.
2297	860.08	3rd	Interfere with a railroad signal.
2298	860.13(1)(a)	3rd	Operate aircraft while under the influence.
2299	893.13(2)(a)2.	3rd	Purchase of cannabis.
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2301	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
2302	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
2303	(c) LEVEL 3		
2304			
	Florida	Felony	
	Statute	Degree	Description
2305	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
2306	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
2307	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
2308	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.

2309	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
2310	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
2311	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
2312	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
2313	327.35(2)(b)	3rd	Felony BUI.
2314	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
2315	328.07(4)	3rd	Manufacture, exchange, or

2316	376.302(5)	3rd	possess vessel with counterfeit or wrong ID number. Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
2317	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
2318	379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
2319	379.2431	3rd	Soliciting to commit or

2320	(1) (e) 7.		conspiring to commit a violation of the Marine Turtle Protection Act.
2321	400.9935(4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
2322	400.9935(4) (e)	3rd	Filing a false license application or other required information or failing to report information.
2323	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
2324	501.001(2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
	624.401(4) (a)	3rd	Transacting insurance without a certificate of authority.

2325	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
2326	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
2327	697.08	3rd	Equity skimming.
2328	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
2329	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
2330	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
2331	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed

			with firearm or dangerous weapon.
2332	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
2333	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
2334	812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
2335	<u>815.04(4)(b)</u> <del>815.04(5)(b)</del>	2nd	Computer offense devised to defraud or obtain property.
2336	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
2337	817.233	3rd	Burning to defraud insurer.
2338	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor

			vehicle accidents.
2339	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
2340	817.236	3rd	Filing a false motor vehicle insurance application.
2341	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
2342	817.413(2)	3rd	Sale of used goods of \$1,000 or more as new.
2343	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.
2344	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.

2345	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
2346	843.19	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.
2347	860.15(3)	3rd	Overcharging for repairs and parts.
2348	870.01(2)	3rd	Riot; inciting or encouraging.
2349	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).
2350	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs

2351	893.13(1)(f)2.	2nd	<p>within 1,000 feet of university.</p> <p>Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.</p>
2352	893.13(4)(c)	3rd	<p>Use or hire of minor; deliver to minor other controlled substances.</p>
2353	893.13(6)(a)	3rd	<p>Possession of any controlled substance other than felony possession of cannabis.</p>
2354	893.13(7)(a)8.	3rd	<p>Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.</p>
2355	893.13(7)(a)9.	3rd	<p>Obtain or attempt to obtain</p>

			controlled substance by fraud, forgery, misrepresentation, etc.
2356	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
2357	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
2358	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
2359	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person,

2360	893.13(8)(a)3.	3rd	or owner of an animal in obtaining a controlled substance.
2361	893.13(8)(a)4.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
2362	918.13(1)(a)	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
2363	944.47 (1)(a)1. & 2.	3rd	Alter, destroy, or conceal investigation evidence.
2364	944.47(1)(c)	2nd	Introduce contraband to correctional facility.
			Possess contraband while upon the grounds of a correctional institution.

