

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2430

SPONSOR: Commerce and Economic Opportunities Committee and Senator Diaz de la Portilla

SUBJECT: Public Records/Business Information

DATE: March 10, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Birnholz/Maclure</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute replaces the original bill and creates a public records exemption relating to certain state economic development programs and incentives, including the Capital Investment Tax Credit Program under s. 220.191, F.S.; the Qualified Defense Contractor Tax Refund Program under s. 288.1045, F.S.; the Qualified Target Industry Tax Refund Program under s. 288.106, F.S.; the high-impact performance incentives under s. 288.108, F.S.; and the Quick Action Closing Fund under s. 288.1088, F.S. The public records exemption is comparable to a public records exemption that was in s. 288.1066, F.S., that was repealed as of October 2, 2001. This committee substitute also makes changes to public records information-sharing provisions related to the administration of certain state economic development programs and incentives.

This committee substitute substantially amends the following sections of the Florida Statutes: 213.053, 443.171, and 443.1715. This committee substitute creates section 288.1067, Florida Statutes.

II. Present Situation:

Government in the Sunshine

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24 of the Florida Constitution provides:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Law¹ specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. The term “public records” has been defined by the Legislature in s. 119.011(1), F.S., to include:

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

This definition of “public records” has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business that are used to perpetuate, communicate, or formalize knowledge.² Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.³

The Florida Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., establishes a review and repeal process for exemptions to public records or meetings requirements. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2 of the fifth year, unless the Legislature acts to re-enact the exemption. Section 119.15(3)(a), F.S., requires a law that enacts a new exemption or substantially amends an existing exemption to state that the exemption is repealed at the end of five years and that the exemption must be reviewed by the Legislature before the scheduled repeal date. An “exemption is substantially amended if the amendment expands the scope of the

¹Chapter 119, F.S.

² *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

³ *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption”.⁴

In the year before the repeal of an exemption, the Division of Statutory Revision is required to certify to the President of the Senate and the Speaker of the House of Representatives each exemption scheduled for repeal the following year which meets the criteria of an exemption as defined in the section. Any exemption that is not identified and certified is not subject to legislative review and repeal under the Open Government Sunset Review Act. If the division fails to certify an exemption that it subsequently determines should have been certified, it must include the exemption in the following year’s certification after that determination.

Section 119.15(2), F.S., states that an exemption is to be maintained only if:

- < The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- < The exemption is necessary for the effective and efficient administration of a governmental program; or
- < The exemption affects confidential information concerning an entity.

Section 119.15(4)(a), F.S., requires, as part of the review process, the consideration of the following specific questions:

- < What specific records or meetings are affected by the exemption?
- < Whom does the exemption uniquely affect, as opposed to the general public?
- < What is the identifiable public purpose or goal of the exemption?
- < Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Section 119.15(4)(b), F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- < The exemption allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- < The exemption protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this provision, only information that would identify the individuals may be exempted; or

⁴ Section 119.15(3)(b), F.S.

- < The exemption protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Under s. 119.15(4)(e), F.S., notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and re-enactment of an exemption under the section. The failure of the Legislature to comply strictly with the section does not invalidate an otherwise valid re-enactment. Further, one session of the Legislature may not bind a future Legislature. As a result, a new session of the Legislature could preserve an exemption that does not meet the explicit standards set forth in the Open Government Sunset Review Act of 1995, so long as the requirements of Art. I, s. 24 of the Florida Constitution are not violated.

Qualified Defense Contractor Tax Refunds

Finding that high technology jobs in the state were threatened by downsizing in the national defense budget, the Legislature during a special session in 1993 created a tax refund program designed to facilitate the employment of Florida citizens by defense contractors. The Qualified Defense Contractor (QDC) Tax Refund Program authorized tax refunds to a certified contractor that: (1) secured a new Department of Defense (DOD) contract; (2) consolidated an existing DOD contract in Florida; (3) converted defense production jobs to non-defense production jobs; or (4) contracted for the reuse of a defense-related facility⁵. The program was repealed effective December 1, 1994.⁶

In 1996, the QDC program was re-created and codified in s. 288.1045, F.S.⁷ In order to participate in the program and be eligible to receive tax refunds, a business must apply to the Office of Tourism, Trade, and Economic Development (OTTED) for certification. The statute prescribes information that must be submitted by a defense contractor in order to be certified.⁸ The required information varies depending upon whether the business is consolidating a DOD contract or has secured a new DOD contract; is converting defense production jobs to non-defense production jobs; or has a contract to reuse a defense-related facility. Examples of the types of information that is generally required to be submitted during the application process include: (1) the applicant's federal employer identification number and state sales tax registration number; (2) the number of full-time jobs in Florida that will be dedicated to the project and the average wage of such jobs; (3) the percentage of the applicant's gross receipts derived from DOD contracts during the five taxable years preceding the application date; (4) the amount of various state taxes paid during the five fiscal years preceding the application date; and (5) the estimated amount of tax refunds to be claimed in each fiscal year under the QDC program.

⁵ Section 288.104, F.S., (1994 Supp.).

⁶ The Legislature had specified that the program would be repealed effective December 1, 1994, if no qualified applicant had entered into a valid new DOD contract or begun consolidation of an existing DOD contract, which was expected to result in the employment of at least 1,000 full-time employees. Because this condition was not satisfied by a single qualified applicant, the statute stood repealed.

⁷ See s. 1, ch. 96-348, L.O.F.

⁸ Section 288.1045(3), F.S.

The QDC program features a local financial support component, under which an eligible business must secure a resolution adopted by county government which recommends the project and which indicates that the necessary commitments of local financial support for the business exist. Local financial support means funding from local sources, public or private, which is equal to 20 percent of the annual tax refund for a qualified business.⁹

Approved applicants enter into an agreement with OTTED and may receive refunds based on the payment of sales and use taxes, corporate income taxes, intangible personal property taxes, emergency excise taxes, excise taxes on documents, and ad valorem taxes paid. Tax refunds generally are paid to a participating business over a period of several years. A qualified applicant may not be qualified for any project to receive more than \$5,000 times the number of jobs provided for in the tax refund agreement.

Qualified Target Industry Tax Refunds

The Qualified Target Industry (QTI) Tax Refund Program, s. 288.106, F.S., is one of Florida's main economic development incentives. The QTI program allows new or expanding businesses in certain industrial sectors or corporate headquarters to be approved for tax refunds of \$3,000 per job created (\$6,000 in an enterprise zone or rural county). To be eligible, a business's project must create at least 10 full-time jobs, and an expansion of an existing business must result in a 10-percent increase in employment at the business. Approved applicants enter into an agreement with OTTED and may receive refunds based on the payment of sales and use taxes, corporate income taxes, intangible personal property taxes, emergency excise taxes, excise taxes on documents, ad valorem taxes paid, and insurance premium taxes. Tax refunds generally are paid to a participating business over a period of several years.

To participate in the program, an eligible business must apply to OTTED before the business has made a decision to locate a new business in this state or before the business had made the decision to expand an existing business in this state. As part of the application process, the business must submit, among other items: (1) its federal employer identification number and its state sales tax registration number; (2) the number of full-time jobs in this state that will be dedicated to the project and the average wage of such jobs; (3) an estimate of the proportion of the sales resulting from the project that will be made outside the state; and (4) any other additional information requested by OTTED.¹⁰

The QTI program features a local financial support component, under which an eligible business must submit a resolution adopted by county government which recommends that certain types of businesses be approved as qualified and states that the commitments of local financial support necessary for the target industry business exist. Local financial support means funding from local sources, public or private, which is equal to 20 percent of the annual tax refund for a qualified business.¹¹

⁹ Section 288.1045(1)(o) and (3), F.S.

¹⁰ Section 288.106(3)(a), F.S.

¹¹ Section 288.106(1)(j) and (3)(a)9., F.S.

Confidentiality of QDC and QTI Records

Section 288.1066, F.S., stands repealed as of October 2, 2001. This section provides a public records exemption for specified information that is received by OTTED; Enterprise Florida, Inc.; or county or municipal governmental entities and their employees under the administration of the Qualified Defense Contractor (QDC) and Qualified Target Industry (QTI) tax refund programs.¹²

For the QDC program, the statute provides that the following information is confidential for a period not to exceed the duration of the tax refund agreement or 10 years, whichever is earlier:

- < The applicant's federal employer identification number and state sales tax registration number.
- < The percentage of the business's gross receipts derived from DOD contracts during the five taxable years immediately preceding the date the application for certification under the program is submitted.
- < The amount of the following taxes paid during the five fiscal years preceding the date of the application: sales and use taxes under ch. 212, F.S.; corporate income taxes under ch. 220, F.S.; intangible personal property taxes under ch. 199, F.S.; emergency excise taxes under ch. 221, F.S.; and ad valorem taxes. In addition, the exemption applies to information on the projected amounts of such taxes that will be due in the three fiscal years following the application date.
- < Any trade secret information as defined in s. 812.081, F.S., contained in statements concerning the applicant's need for or use of the tax refunds.¹³

For the QTI program, the statute provides that the following information is confidential for a period not to exceed the duration of the tax refund agreement or 10 years, whichever is earlier:

- < The applicant's federal employer identification number and state sales tax registration number.
- < Any trade secret information as defined in s. 812.081, F.S., contained in any description of the type of activity or product covered by the creation of a new business or expansion of an existing business.
- < The anticipated wages of the jobs projected to be created by the economic development project.
- < The amount of the following taxes paid during the five fiscal years preceding the date of the application: sales and use taxes under ch. 212, F.S.; corporate income taxes under ch. 20, F.S.; intangible personal property taxes under ch. 199, F.S.; emergency excise taxes under ch. 221, F.S.; and ad valorem taxes. In addition, the exemption applies to

¹² When the Legislature created the QDC Tax Refund Program during a special session in 1993, it also created a public records exemption for certain information submitted by businesses under the program. (*See* s. 1, ch. 93-420, L.O.F., and s. 288.1065, F.S. (1994 Supp.)) However, the public records exemption was repealed effective April 15, 1994. Prior to the adoption of s. 288.1066, F.S., in 1996, no comparable public records exemption existed for the QTI Tax Refund Program.

¹³ Section 288.1066(1)(a)-(d), F.S.

- information on the projected amounts of such taxes that will be due in the three fiscal years following the application date.
- < Any trade secret information as defined in s. 812.081, F.S., contained in statements concerning the role that the tax refunds will play in the business's decision to locate or expand in Florida.
 - < An estimate of the proportion of sales resulting from the project that will be made outside this state.¹⁴

The statute also specifies, however, that it would stand repealed on October 2, 2001, unless the Legislature reviewed it and saved it from repeal through reenactment during the 2001 session (s. 288.1066(4), F.S.).

Legislature's Review

This public records exemption was reviewed by the Legislature during the 2000-2001 interim.¹⁵ The Open Government Sunset Review Act prescribes that a public records exemption may be maintained only if it serves an identifiable public purpose, and the statute provides conditions supporting a public-purpose finding. Based upon input from program administrators and other economic development professionals, the report found that the exemption contained in s. 288.1066, F.S., satisfied two of these conditions: (1) the exemption allows the state and its political subdivisions to effectively and efficiently administer governmental programs;¹⁶ and (2) the exemption protects confidential information concerning entities, disclosure of which would result in injury to the entity in the marketplace.¹⁷ (Florida Senate Interim Project Report No. 2001-031, *Review of Public Records Exemption Relating to Qualified Defense Contractor and Qualified Target Industry Tax Refund Programs*, November 2000.)

The report recommended that the exemption be reenacted and saved from repeal.¹⁸ Although the Senate adopted legislation revising and reenacting the exemption (*see* SB 486 from the 2001 Regular Session), the legislation was not adopted by the full House of Representatives. Consequently, the section of the Florida Statutes authorizing the exemption, s. 288.1066, F.S., stands repealed effective October 2, 2001.

Public Records Relating to Unemployment Compensation

Sections 443.171(7) and 443.1715(1), F.S., provide that certain information revealing an employing unit or individual's identity obtained from an employing unit or from any individual under ch. 443, F.S., (relating to unemployment compensation) must, except to the extent necessary for the proper administration of unemployment compensation claims or upon written

¹⁴ Section 288.1066(2)(a)-(f), F.S.

¹⁵ *See* Florida Senate Interim Project Report No. 2001-031, *Review of Public Records Exemption Relating to Qualified Defense Contractor and Qualified Target Industry Tax Refund Programs*, November 2000, by the Committee on Commerce and Economic Opportunities.

¹⁶ Section 119.15(4)(b)1., F.S.

¹⁷ Section 119.15(4)(b)3., F.S.

¹⁸ *See* Florida Senate Interim Project Report No. 2001-031, *Review of Public Records Exemption Relating to Qualified Defense Contractor and Qualified Target Industry Tax Refund Programs*, November 2000. The report also recommended revisions to the exemption based upon input from respondents to a survey executed in connection with the report.

authorization of the claimant, be held confidential and exempt from s. 119.07(1), F.S., and may be disclosed only as specifically authorized in these subsections.¹⁹ Currently, OTTED is authorized to receive such information under s. 443.171(7), F.S., for the purpose of administering the QDC and QTI programs. Section 443.1715(1), F.S., authorizes OTTED to receive such information for the purpose of administering only the QDC program.

High-Impact Performance Incentives

Section 288.108, F.S., provides for the payment of grants to a business in a high-impact sector that makes a cumulative investment in the state of \$100 million and creates at least 100 full-time jobs. In the case of a research-and-development facility, the investment must be \$75 million, with 75 full-time jobs. The total amount of active performance grants scheduled for payment by OTTED in any single fiscal year may not exceed the lesser of \$30 million or the amount appropriated by the Legislature for that fiscal year for qualified high-impact business performance grants (s. 288.108(4)(a), F.S.). The statute prescribes a process under which Enterprise Florida, Inc., and OTTED select and designate the high-impact sectors eligible for the program. Through this process, the following business classifications have been designated as high-impact sectors:

- Within the information technology sector: office and computing equipment (Standard Industrial Classification 357), communications equipment (SIC 366), electronic components manufacturing (SIC 367), telephone communications (SIC 481), telegraph and other message communications (SIC 482), and information services (SIC 737); and
- Within the transportation equipment-manufacturing sector: aircraft and parts (SIC 372), guided missiles and space vehicles and parts (SIC 376), and motor vehicles and passenger car bodies (SIC 3711).

The statute also currently specifies that the silicon-technology sector is a high-impact sector (s. 288.108(6)(i), F.S.).

Capital Investment Tax Credit

Section 220.191, F.S., provides for the Capital Investment Tax Credit (CITC) Program to allow certain businesses which establish qualifying projects in this state to receive an annual credit against the corporate income tax liability or the premium tax liability generated by the project. The term “qualifying project” is defined as a new or expanding facility in this state which creates at least 100 new jobs in this state and is in one of the high-impact sectors identified by Enterprise Florida, Inc., and certified by OTTED pursuant to s. 288.108(6), F.S., including, but not limited to, aviation, aerospace, automotive, and silicon technology industries. (*See* the description of the high-impact performance incentives under s. 288.108, F.S., above.)

The annual tax credit granted under the CITC Program must not exceed the following percentages of the annual corporate income tax liability or the premium tax liability generated by or arising out of a qualifying project:

¹⁹ Office of the Attorney General, *Government-In-The-Sunshine Manual*, volume 23 (2001), p. 222.

- One hundred percent for a qualifying project which results in a cumulative capital investment of at least \$100 million.²⁰
- Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least \$50 million but less than \$100 million.
- Fifty percent for a qualifying project which results in a cumulative capital investment of at least \$25 million but less than \$50 million.

A qualifying project that results in a cumulative capital investment of less than \$25 million is not eligible for the capital investment tax credit.

Quick Action Closing Fund

Section 288.1088, F.S., creates the Quick Action Closing Fund within OTTED to provide resources to respond to extraordinary economic opportunities and to compete effectively for high-impact business facilities. The statute provides a process for reviewing facility projects and awarding funds under a performance contract.

Economic Development Agency – Public Records

Section 288.075, F.S., provides that, upon written request from a business, records of an economic development agency (agency) which contain or would provide information concerning plans, intentions, or interests of the business to locate, relocate, or expand any of its business activities in this state are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 24 months after the date the agency receives a request for confidentiality or until disclosed by the agency under specified circumstances or by the business requesting confidentiality under this section. To the extent that this section provides a public records exemption for information concerning a business's plans, intentions, or interests to locate, relocate, or expand in this state, it appears that this section may provide a public records exemption for certain information relating to the state economic development incentive programs under ss. 220.191, 288.1045, 288.106, 288.108, and 288.1088, F.S.

Confidentiality must be maintained until the expiration of the 24-month period or until documents or information are otherwise disclosed, whichever occurs first. An agency may extend the period of confidentiality for up to an additional 12 months upon written request from the business that originally requested confidentiality under this section and upon a finding by the agency that the business is still actively considering locating, relocating, or expanding its business activities in this state. Notwithstanding these confidentiality provisions, trade secrets contained in the records of an agency relating to the plans, intentions, or interests of a business that has requested confidentiality pursuant to this section are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 10 years after the date the agency receives a request for confidentiality or until otherwise disclosed, whichever occurs first.

²⁰ The term "cumulative capital investment" is defined as the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations.

Department of Revenue Confidentiality and Record Sharing Requirements

Section 213.053, F.S., sets forth confidentiality and information sharing requirements for the Department of Revenue with regard to tax administration matters, including payment information related to OTTED. Specifically, s. 213.053(7)(k), F.S., states that the department may provide payment information relating to chs. 199, 201, 212, 220, and 221, F.S., (relating to intangible personal property taxes, excise tax on documents, tax on sales, use, and other transactions, corporate income tax, and tax on particular corporate income taxpayers, respectively) to OTTED in its administration of the tax refund program for qualified defense contractors (s. 288.1045, F.S.) and the tax refund program for qualified target industry businesses (s. 288.106, F.S.).

III. Effect of Proposed Changes:

The committee substitute replaces the original bill and creates a public records exemption relating to certain state economic development programs and incentives, including the Capital Investment Tax Credit Program under s. 220.191, F.S.; the Qualified Defense Contractor Tax Refund Program under s. 288.1045, F.S.; the Qualified Target Industry Tax Refund Program under s. 288.106, F.S.; the high-impact performance incentives under s. 288.108, F.S.; and the Quick Action Closing Fund under s. 288.1088, F.S. The public records exemption is comparable to a public records exemption contained in a section of the Florida Statutes²¹ that stands repealed as of October 2, 2001. This committee substitute also makes changes to public records information-sharing provisions related to the administration of certain state economic development programs and incentives. The following is a section-by-section analysis of this committee substitute:

Section 1 creates s. 288.1067, F.S., to provide a public records exemption for specified business information that is held by the Office of Tourism, Trade, and Economic Development (OTTED); Enterprise Florida, Inc., (EFI); county or municipal governmental entities; or the employees or agents of OTTED, EFI, or local government entities under the incentive programs created by ss. 220.191, 288.1045, 288.106, 288.108, and 288.1088, F.S. The following specified information is exempt for a period not to exceed the duration of the relevant tax refund, tax credit, or incentive agreement:

- < The business's federal employer identification number, unemployment compensation number, and state sales tax registration number.
- < Any trade secret information as defined in s. 812.081, F.S., contained in statements concerning the applicant's need for or use of the tax refunds. Notwithstanding any provision of this section, trade secret information shall continue to be confidential and exempt after the duration of the tax refund, tax credit, or incentive agreement.
- < The percentage of the business's sales occurring outside this state and, for businesses applying under s. 288.1045, F.S., the percentage of the business's gross receipts derived from Department of Defense contracts during the five years immediately preceding the date the application for certification under the program is submitted.

²¹ Section 288.1066, F.S.

- < The anticipated wages of the jobs projected to be created by the economic development project.
- < The average wage actually paid by the business for those jobs created by the project and any detailed proprietary business information or an employee's personal identifying information, held as evidence of the achievement or non-achievement of the wage or job-creation requirements of the tax refund, tax credit, or incentive agreement programs.
- < Any proprietary business information regarding capital investment in eligible building and equipment made by the qualified business project when held by OTTED as evidence of the achievement or non-achievement of the investment requirements for the incentive programs under ss. 220.191, 288.108, or 288.1088, F.S.
- < The amount of the following taxes which the qualified business reports on its application for certification or reports during the term of the tax refund agreement for which the qualified business claims a tax refund under s. 288.1045, F.S., or s. 288.106, F.S.: sales and use taxes under ch. 212, F.S.; corporate income taxes under ch. 220, F.S.; intangible personal property taxes under ch. 199, F.S.; emergency excise taxes under ch. 221, F.S.; insurance premium taxes under ch. 624, F.S.; excise tax on documents under ch. 201, F.S.; and ad valorem taxes as defined in s. 220.03(1), F.S. In addition, the newly created s. 288.1067(1)(g), F.S., (relating to specified tax information being exempt from the Public Records Law) provides that, "any information held as evidence of the achievement or nonachievement of performance items contained in the tax refund agreement" is exempt from the Public Records Law. If the intent of this provision is to exempt information specific to the taxes listed in this paragraph, the Legislature may wish to insert the word "such" before the word "information" on page 3, line 29, of this committee substitute.

This section further provides that OTTED may release the following information:

- The names of qualified businesses, the total number of jobs each business expects to create, the total number of jobs created by each business, and the amount of tax refunds awarded to and claimed by each business under s. 228.1045, F.S., or s. 288.106, F.S. However, for a business applying under s. 288.1045, F.S., based on obtaining a new Department of Defense contract, the total number of jobs expected and the amount of tax refunds claimed may not be released until the new Department of Defense contract is awarded.
- The amount of incentives awarded and claimed by each business under s. 288.108, F.S., or s. 288.1088, F.S.
- The names of qualified businesses, the total number of jobs each business expects to create, and the total number of jobs created by each business under s. 220.191, F.S.

This section specifies that program administrators may publish statistics in the aggregate and so classified as to prevent the identification of a single qualified applicant.

This section is repealed on October 2, 2007, unless reenacted after review by the Legislature under the Open Government Sunset Review Act.

Section 2 adds, contingent upon Senate Bill 2414 or similar legislation becoming a law, a subsection (5) to s. 288.1067, F.S., (as created by this committee substitute) to provide that the public records exemption created by s. 288.1067, F.S., applies to a qualified aviation-industry business as defined in s. 288.1045, F.S.²² This section further provides that:

In addition, the amount of aviation fuel taxes paid pursuant to s. 206.9825, when reported on an application for certification as a qualified aviation-industry business or paid during the term of the qualified aviation-industry business's tax refund agreement, and for which the qualified aviation-industry business claims a tax refund under s. 288.1045, and is held as evidence of the achievement, or nonachievement, of performance items contained in the tax refund agreement, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, for a period not to exceed the duration of the tax refund agreement, when held by the Office of Tourism, Trade, and Economic Development, Enterprise Florida, Inc., or county or municipal government entities, and their employees or agents.

However, the referent of the clause "is held as evidence of the achievement, or nonachievement, of performance items contained in the tax refund agreement" is unclear.

Section 3 amends s. 213.053(7)(k), F.S., to expand information-sharing between the Department of Revenue (DOR) and OTTED in the following ways:

- In addition to current information-sharing, DOR would be able to provide to OTTED:
 - payment information relating to ch. 624, F.S., (insurance premium tax) in the administration of the tax refund program for qualified defense contractors authorized by s. 288.1045, F.S., and the tax refund program for qualified target industry businesses authorized by s. 288.106, F.S.; and
 - information relating to tax credits taken by businesses under s. 220.191, F.S, and exemptions or refunds received by businesses under s. 212.08(5)(j), F.S., in the administration and evaluation of the capital investment tax credit program authorized in s. 220.191, F.S, and the semiconductor, defense, and space tax exemption program authorized in .s. 212.08(5)(j), F.S.
- DOR would be able to provide to OTTED employees or agents of OTTED (as identified in writing by OTTED to DOR):
 - payment information relating to chs. 199, 201, 212, 220, 221, and 624, F.S., in the administration of the tax refund program for qualified defense contractors authorized by s. 288.1045, F.S., and the tax refund program for qualified target industry businesses authorized by s. 288.106, F.S.; and

²² Senate Bill 2414, relating to economic stimulus, amends s. 288.1045, F.S., to create a tax refund program for qualified aviation-industry businesses. The program is similar to the current Qualified Defense Contractor Tax Refund Program under that section.

- information relating to tax credits taken by businesses under s. 220.191, F.S, and exemptions or refunds received by businesses under s. 212.08(5)(j), F.S., in the administration and evaluation of the capital investment tax credit program authorized in s. 220.191, F.S, and the semiconductor, defense, and space tax exemption program authorized in .s. 212.08(5)(j), F.S.

Sections 4 and 5 amend, contingent upon Senate Bill 2414 or similar legislation becoming a law, ss. 443.171(7) and 443.1715(1), F.S., (relating to certain unemployment compensation information) to clarify references to s. 288.1045, F.S., to reflect the addition of aviation-industry businesses to the programs under that section (as amended by SB 2414). Section 443.1715, F.S., is further amended to authorize OTTED to receive certain unemployment compensation information for purposes of administering the QTI program under s. 288.106, F.S.

Section 6 provides a legislative statement of public necessity for the public records exemption, including that the release of sensitive business information could injure a business in the marketplace by providing its competitors with detailed insights into the financial status of the business.

Section 7 provides that, except as otherwise expressly provided in this act, this act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution permits the Legislature to create exemptions to public records requirements by general law. These exemptions must be no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption “. . . shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of the section and shall relate to one subject.” The exemptions appear to relate to one subject. Additional sections of law that are contained in the bill appear to be related to enforcement.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By protecting sensitive business information, the public records exemption addressed by this committee substitute may help prevent private firms that are participating in the tax refund programs from being injured in the marketplace through the disclosure of insights about the businesses' finances and strategies to competitors. In addition, to the extent the public records exemption makes businesses less reluctant to participate in the programs, it may help facilitate economic development activities that benefit the businesses and the communities in which they invest.

C. Government Sector Impact:

State and local economic development organizations are responsible for maintaining the security of records generated through their administration of economic development incentive programs. The administrative costs associated with maintaining such confidentiality are estimated to be insignificant.

Additionally, by expanding information sharing between the Department of Revenue and the Office of Tourism, Trade, and Economic Development with regard to certain economic development programs, administration of those programs could be improved.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The statement of public necessity accompanying the creation of this public records exemption refers to "qualified aviation-industry businesses" as a category distinct from the qualified defense contractors and qualified target industry businesses, which are currently addressed in ss. 288.1045 and 288.106, F.S., respectively. This reference to "qualified aviation-industry businesses" is a result of a separate bill, SB 2414, which proposes to create a *new* category in s. 288.1045, F.S., for such businesses.

VIII. Amendments:

None.