

By Senator Diaz de la Portilla

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1 A bill to be entitled

2 An act relating to public records; creating s.

3 288.1067, F.S.; creating a public records

4 exemption for specified business information

5 received under the tax refund programs for

6 qualified defense contractors, qualified

7 aviation-industry businesses, and qualified

8 target-industry businesses; prescribing the

9 time period for confidentiality; specifying

10 that the exemption does not preclude

11 publication of aggregate data or release of

12 names of qualifying businesses and refund

13 amounts; providing for future repeal and

14 legislative review; amending ss. 443.171,

15 443.1715, F.S., to conform; providing a

16 statement of public necessity; providing an

17 effective date.

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

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21 Section 1. Section 288.1067, Florida Statutes, is

22 created to read:

23 288.1067 Confidentiality of records.--

24 (1) The following information when received by the

25 Office of Tourism, Trade, and Economic Development; Enterprise

26 Florida, Inc.; or county or municipal governmental entities

27 and their employees pursuant to the tax refund program for

28 qualified businesses as required by s. 288.1045 is

29 confidential and exempt from the provisions of s. 119.07(1)

30 and s. 24(a), Art. I of the State Constitution for a period

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1 not to exceed the duration of the tax refund agreement or 10
2 years, whichever is earlier:
3 (a) The applicant's federal employer identification
4 number and Florida sales tax registration number.
5 (b) The percentage of the applicant's gross receipts
6 derived from Department of Defense contracts during the 5
7 taxable years immediately preceding the date the application
8 is submitted.
9 (c) The amount of:
10 1. Taxes on sales, use, and other transactions paid
11 pursuant to chapter 212;
12 2. Corporate income taxes paid pursuant to chapter
13 220;
14 3. Intangible personal property taxes paid pursuant to
15 chapter 199;
16 4. Emergency excise taxes paid pursuant to chapter
17 221;
18 5. Excise taxes on documents paid pursuant to chapter
19 201;
20 6. Ad valorem taxes paid; and
21 7. Aviation fuel taxes paid pursuant to s. 206.9825
22
23 during the 5 fiscal years immediately preceding the date of
24 the application, and the projected amounts of such taxes to be
25 due in the 3 fiscal years immediately following the date of
26 the application.
27 (d) The amount of each of the taxes specified in
28 paragraph (c) which the qualified applicant paid during the
29 term of the tax refund agreement and for which the qualified
30 applicant seeks a tax refund under s. 288.1045.
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1 (e) Any trade secret information as defined in s.
2 812.081 contained within any statement concerning the
3 applicant's need for tax refunds or concerning the proposed
4 uses of such refunds by the applicant.

5 (f) Information relating to the wages paid for jobs by
6 a qualified applicant when submitted as part of a claim for a
7 tax refund under s. 288.1045 and as evidence of the
8 achievement of performance items contained in the tax refund
9 agreement.

10 (2) The following information when received by the
11 Office of Tourism, Trade, and Economic Development; Enterprise
12 Florida, Inc.; or county or municipal governmental entities
13 and their employees pursuant to the qualified target industry
14 tax refund program as required by s. 288.106 is confidential
15 and exempt from the provisions of s. 119.07(1) and s. 24(a),
16 Art. I of the State Constitution for a period not to exceed
17 the duration of the tax refund agreement or 10 years,
18 whichever is earlier:

19 (a) The applicant's federal employer identification
20 number and Florida sales tax registration number.

21 (b) Any trade secret information as defined in s.
22 812.081 contained within any description of the type of
23 business activity or product covered by the project.

24 (c) The anticipated wages of those jobs projected to
25 be created by the project.

26 (d) The amount of:

27 1. Taxes on sales, use, and other transactions paid
28 pursuant to chapter 212;

29 2. Corporate income taxes paid pursuant to chapter
30 220;

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1 3. Intangible personal property taxes paid pursuant to
2 chapter 199;

3 4. Emergency excise taxes paid pursuant to chapter
4 221;

5 5. Insurance premium taxes paid pursuant to s.
6 624.509;

7 6. Excise taxes on documents paid pursuant to chapter
8 201; and

9 7. Ad valorem taxes paid

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11 during the 5 fiscal years immediately preceding the date of
12 the application, and the projected amounts of such taxes to be
13 due in the 3 fiscal years immediately following the date of
14 the application.

15 (e) The amount of each of the taxes specified in
16 paragraph (d) which the qualified target industry business
17 paid during the term of the tax refund agreement and for which
18 the business seeks a tax refund under s. 288.106.

19 (f) Any trade secret information as defined in s.
20 812.081 contained within any statement concerning the role
21 that the tax refunds requested will play in the decision of
22 the applicant to locate or expand in this state.

23 (g) An estimate of the proportion of the sales
24 resulting from the project that will be made outside this
25 state.

26 (h) Information relating to the wages paid for jobs by
27 a qualified target industry business when submitted as part of
28 a claim for a tax refund under s. 288.106 and as evidence of
29 the achievement of performance items contained in the tax
30 refund agreement.

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1 (3) Nothing contained in this section shall prevent
2 the Office of Tourism, Trade, and Economic Development;
3 Enterprise Florida, Inc.; or any county or municipal
4 governmental entity receiving the information described in
5 this section from publishing statistics in the aggregate and
6 so classified as to prevent the identification of a single
7 qualified applicant.

8 (4) Nothing contained in this section shall prevent
9 the Office of Tourism, Trade, and Economic Development;
10 Enterprise Florida, Inc.; or any county or municipal
11 governmental entity from releasing the names of qualified
12 businesses, the amount of refunds awarded to such businesses,
13 and the amount of refunds claimed by such businesses under ss.
14 288.1045 or 288.106.

15 (5) This section is subject to the Open Government
16 Sunset Review Act of 1995 in accordance with s. 119.15, and
17 shall stand repealed on October 2, 2006, unless reviewed and
18 saved from repeal through reenactment by the Legislature.

19 Section 2. Subsection (7) of section 443.171, Florida
20 Statutes, is amended to read:

21 443.171 Division and commission; powers and duties;
22 rules; advisory council; records and reports; proceedings;
23 state-federal cooperation.--

24 (7) RECORDS AND REPORTS.--Each employing unit shall
25 keep true and accurate work records, containing such
26 information as the division may prescribe. Such records shall
27 be open to inspection and be subject to being copied by the
28 division at any reasonable time and as often as may be
29 necessary. The division or an appeals referee may require from
30 any employing unit any sworn or unsworn reports, with respect
31 to persons employed by it, deemed necessary for the effective

1 administration of this chapter. However, a state or local
2 governmental agency performing intelligence or
3 counterintelligence functions need not report an employee if
4 the head of such agency has determined that reporting the
5 employee could endanger the safety of the employee or
6 compromise an ongoing investigation or intelligence mission.
7 Information revealing the employing unit's or individual's
8 identity thus obtained from the employing unit or from any
9 individual pursuant to the administration of this chapter,
10 shall, except to the extent necessary for the proper
11 presentation of a claim or upon written authorization of the
12 claimant who has a workers' compensation claim pending, be
13 held confidential and exempt from the provisions of s.
14 119.07(1). Such information shall be available only to public
15 employees in the performance of their public duties, including
16 employees of the Department of Education in obtaining
17 information for the Florida Education and Training Placement
18 Information Program and the Office of Tourism, Trade, and
19 Economic Development in its administration of the ~~qualified~~
20 ~~defense contractor~~ tax refund program for qualified businesses
21 authorized by s. 288.1045 ~~and~~ the qualified target industry
22 business tax refund program authorized by s. 288.106. Any
23 claimant, or the claimant's legal representative, at a hearing
24 before an appeals referee or the commission shall be supplied
25 with information from such records to the extent necessary for
26 the proper presentation of her or his claim. Any employee or
27 member of the commission or any employee of the division, or
28 any other person receiving confidential information, who
29 violates any provision of this subsection is guilty of a
30 misdemeanor of the second degree, punishable as provided in s.
31 775.082 or s. 775.083. However, the division may furnish to

1 any employer copies of any report previously submitted by such
2 employer, upon the request of such employer, and the division
3 is authorized to charge therefor such reasonable fee as the
4 division may by rule prescribe not to exceed the actual
5 reasonable cost of the preparation of such copies. Fees
6 received by the division for copies provided under this
7 subsection shall be deposited to the credit of the Employment
8 Security Administration Trust Fund.

9 Section 3. Subsection (1) of section 443.1715, Florida
10 Statutes, is amended to read:

11 443.1715 Disclosure of information; confidentiality.--

12 (1) RECORDS AND REPORTS.--Information revealing the
13 employing unit's or individual's identity obtained from the
14 employing unit or from any individual pursuant to the
15 administration of this chapter, and any determination
16 revealing such information, must, except to the extent
17 necessary for the proper presentation of a claim or upon
18 written authorization of the claimant who has a workers'
19 compensation claim pending, be held confidential and exempt
20 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
21 the State Constitution. Such information may be made available
22 only to public employees in the performance of their public
23 duties, including employees of the Department of Education in
24 obtaining information for the Florida Education and Training
25 Placement Information Program and the Office of Tourism,
26 Trade, and Economic Development in its administration of the
27 ~~qualified defense contractor~~ tax refund program for qualified
28 businesses authorized by s. 288.1045 and the qualified target
29 industry business tax refund program authorized by s. 288.106.
30 Except as otherwise provided by law, public employees
31 receiving such information must retain the confidentiality of

1 such information. Any claimant, or the claimant's legal
2 representative, at a hearing before an appeals referee or the
3 commission shall be supplied with information from such
4 records to the extent necessary for the proper presentation of
5 her or his claim. Any employee or member of the commission or
6 any employee of the division, or any other person receiving
7 confidential information, who violates any provision of this
8 subsection commits a misdemeanor of the second degree,
9 punishable as provided in s. 775.082 or s. 775.083. However,
10 the division may furnish to any employer copies of any report
11 previously submitted by such employer, upon the request of
12 such employer, and may furnish to any claimant copies of any
13 report previously submitted by such claimant, upon the request
14 of such claimant, and the division is authorized to charge
15 therefor such reasonable fee as the division may by rule
16 prescribe not to exceed the actual reasonable cost of the
17 preparation of such copies. Fees received by the division for
18 copies as provided in this subsection must be deposited to the
19 credit of the Employment Security Administration Trust Fund.

20 Section 4. The Legislature finds that it is a public
21 necessity to provide confidentiality for certain information
22 about businesses which is obtained through the administration
23 of the tax refund programs for qualified defense contractors,
24 qualified aviation-industry businesses, and qualified
25 target-industry businesses under sections 288.1045 and
26 288.106, Florida Statutes. The disclosure of information such
27 as trade secrets, tax identification numbers, analyses of
28 gross receipts, the amount of taxes paid, and the amount of
29 employee wages paid could injure a business in the marketplace
30 by providing its competitors with detailed insights into the
31 financial status and the strategic plans of the business,

1 thereby diminishing the advantage that the business maintains
2 over those who do not possess such information. Without this
3 exemption, private-sector businesses, whose records generally
4 are not required to be open to the public, might refrain from
5 participating in these economic development programs and thus
6 would not be able to use the tax refunds available under the
7 programs. If a business were unable to use the tax refunds, it
8 might choose to locate its employment and other investment
9 activities outside the state, depriving the state and the
10 public of the potential economic benefits associated with such
11 activities. The harm to businesses in the marketplace and to
12 effective administration of these economic development
13 programs caused by the release of such information far
14 outweighs the public benefits derived from its release. In
15 addition, because the confidentiality provided by this act
16 does not preclude the reporting of statistics in the aggregate
17 about the programs, as well as the names of businesses
18 participating in the programs and the amount of tax refunds
19 awarded and claimed, the public has access to information
20 important to an assessment of the performance of the programs.

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

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25 SENATE SUMMARY

26 Exempts specified information relating to qualified
27 businesses and the qualified target industry tax refund
28 program under sections 288.1045 and 288.106, Florida
29 Statutes, from public-records requirements for a period
30 of 10 years to the duration of the tax refund period,
31 whichever is the shorter period. (See bill for details.)