

By the Committee on Commerce and Economic Opportunities; and  
Senator Diaz de la Portilla

310-2209-02

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 capital-investment  
6           tax-credit program,  
7           qualified-defense-contractor tax-refund  
8           program, qualified target industry tax-refund  
9           program, high impact sector performance  
10          program, and quick-action closing fund program;  
11          specifying that the exemption does not preclude  
12          publication of aggregate data or release of  
13          names of qualifying businesses and refund  
14          amounts; providing that the public-records  
15          exemption applies to qualified  
16          aviation-industry businesses; providing for  
17          contingent effect; amending s. 213.053, F.S.;  
18          adding an exception to the exemption; amending  
19          s. 443.171, F.S.; adding an exception to the  
20          exemption; amending s. 443.1715, F.S.; adding  
21          an exception to the exemption; providing a  
22          statement of public necessity; providing  
23          effective dates.

24  
25 Be It Enacted by the Legislature of the State of Florida:

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27           Section 1. Section 288.1067, Florida Statutes, is  
28 created to read:

29           288.1067 Confidentiality of records.--

30           (1) The following information held by the Office of  
31 Tourism, Trade, and Economic Development, Enterprise Florida,

1 Inc., or county or municipal governmental entities, and their  
2 employees or agents, pursuant to the incentive programs for  
3 qualified businesses as provided in s. 220.191, s. 288.1045,  
4 s. 288.106, s. 288.108, or s. 288.1088 is confidential and  
5 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.  
6 I of the State Constitution, for a period not to exceed the  
7 duration of the relevant tax refund, tax credit, or incentive  
8 agreement:

9 (a) The business's federal employer identification  
10 number, unemployment compensation account number, and Florida  
11 sales tax registration number.

12 (b) Any trade secret information as defined in s.  
13 812.081. Notwithstanding any provision of this section, trade  
14 secret information shall continue to be confidential and  
15 exempt after the duration of the tax refund, tax credit, or  
16 incentive agreement.

17 (c) The percentage of the business's sales occurring  
18 outside this state and, for businesses applying under s.  
19 288.1045, the percentage of the business's gross receipts  
20 derived from Department of Defense contracts during the 5  
21 years immediately preceding the date the business's  
22 application is submitted.

23 (d) The anticipated wages for the project jobs that  
24 the business plans to create, as reported on the application  
25 for certification.

26 (e) The average wage actually paid by the business for  
27 those jobs created by the project and any detailed proprietary  
28 business information or an employee's personal identifying  
29 information, held as evidence of the achievement or  
30 nonachievement of the wage requirements of the tax refund, tax  
31

1 credit, or incentive agreement programs or of the job-creation  
2 requirements of such programs.

3 (f) Any proprietary business information regarding  
4 capital investment in eligible building and equipment made by  
5 the qualified business project when held by the Office of  
6 Tourism, Trade, and Economic Development as evidence of the  
7 achievement or nonachievement of the investment requirements  
8 for the tax-credit certification under s. 220.191, for the  
9 high-impact performance agreement under s. 288.108, or for the  
10 quick-action closing fund agreement under s. 288.1088.

11 (g) The amount of:

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

14 2. Corporate income taxes paid pursuant to chapter  
15 220;

16 3. Intangible personal property taxes paid pursuant to  
17 chapter 199;

18 4. Emergency excise taxes paid pursuant to chapter  
19 221;

20 5. Insurance premium taxes paid pursuant to chapter  
21 624;

22 6. Excise taxes paid on documents pursuant to chapter  
23 201; or

24 7. Ad valorem taxes paid, as defined in s. 220.03(1),  
25

26 which the qualified business reports on its application for  
27 certification or reports during the term of the tax refund  
28 agreement for which the qualified business claims a tax refund  
29 under s. 288.1045 or s. 288.106, and any information held as  
30 evidence of the achievement or nonachievement of performance  
31 items contained in the tax refund agreement.

1           (2) Nothing contained in this section shall prevent  
2 the Office of Tourism, Trade, and Economic Development or  
3 Enterprise Florida, Inc., from releasing:

4           (a) The names of qualified businesses, the total  
5 number of jobs each business expects to create, the total  
6 number of jobs created by each business, and the amount of tax  
7 refunds awarded to and claimed by each business under s.  
8 228.1045 or s. 288.106. However, for a business applying under  
9 s. 288.1045 based on obtaining a new Department of Defense  
10 contract, the total number of jobs expected and the amount of  
11 tax refunds claimed shall not be released until the new  
12 Department of Defense contract is awarded;

13           (b) The amount of incentives awarded and claimed by  
14 each business under s. 288.108 or s. 288.1088; or

15           (c) The names of qualified businesses, the total  
16 number of jobs each business expects to create, and the total  
17 number of jobs created by each business under s. 220.191.

18           (3) Nothing contained in this section shall prevent  
19 the Office of Tourism, Trade and Economic Development or  
20 Enterprise Florida, Inc., from publishing statistics in the  
21 aggregate and so classified as to prevent the identification  
22 of a single qualified applicant.

23           (4) This section is subject to the Open Government  
24 Sunset Review Act of 1995 in accordance with s. 119.15 and  
25 shall stand repealed on October 2, 2007, unless reviewed and  
26 saved from repeal through reenactment by the Legislature.

27           Section 2. Contingent upon Senate Bill 2414 or similar  
28 legislation becoming a law, and effective upon this act  
29 becoming a law, subsection (5) is added to section 288.1067,  
30 Florida Statutes, as created by this act, to read:

31           288.1067 Confidentiality of records.--

1           (5) The provisions of this section apply to a  
2 qualified aviation-industry business as defined in s.  
3 288.1045. In addition, the amount of aviation fuel taxes paid  
4 pursuant to s. 206.9825, when reported on an application for  
5 certification as a qualified aviation-industry business or  
6 paid during the term of the qualified aviation-industry  
7 business's tax refund agreement, and for which the qualified  
8 aviation-industry business claims a tax refund under s.  
9 288.1045, and is held as evidence of the achievement, or  
10 nonachievement, of performance items contained in the tax  
11 refund agreement, is confidential and exempt from the  
12 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
13 Constitution, for a period not to exceed the duration of the  
14 tax refund agreement, when held by the Office of Tourism,  
15 Trade, and Economic Development, Enterprise Florida, Inc., or  
16 county or municipal government entities, and their employees  
17 or agents.

18           Section 3. Paragraph (k) of subsection (7) of section  
19 213.053, Florida Statutes, is amended to read:

20           213.053 Confidentiality and information sharing.--

21           (7) Notwithstanding any other provision of this  
22 section, the department may provide:

23           (k)1. Payment information relative to chapters 199,  
24 201, 212, 220, ~~and~~ 221, and 624 to the Office of Tourism,  
25 Trade, and Economic Development, or its employees or agents  
26 that are identified in writing by the office to the  
27 department, in the ~~its~~ administration of the tax refund  
28 program for qualified defense contractors authorized by s.  
29 288.1045 and the tax refund program for qualified target  
30 industry businesses authorized by s. 288.106.

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1           2. Information relative to tax credits taken by a  
2 business under s. 220.191 and exemptions or tax refunds  
3 received by a business under s. 212.08(5)(j) to the Office of  
4 Tourism, Trade, and Economic Development, or its employees or  
5 agents that are identified in writing by the office to the  
6 department, in the administration and evaluation of the  
7 capital investment tax credit program authorized in s. 220.191  
8 and the semiconductor, defense, and space tax exemption  
9 program authorized in s. 212.08(5)(j).

10  
11 Disclosure of information under this subsection shall be  
12 pursuant to a written agreement between the executive director  
13 and the agency. Such agencies, governmental or  
14 nongovernmental, shall be bound by the same requirements of  
15 confidentiality as the Department of Revenue. Breach of  
16 confidentiality is a misdemeanor of the first degree,  
17 punishable as provided by s. 775.082 or s. 775.083.

18           Section 4. Contingent upon Senate Bill 2414 or similar  
19 legislation becoming a law, and effective upon this act  
20 becoming a law, subsection (7) of section 443.171, Florida  
21 Statutes, is amended to read:

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

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

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

1 misdemeanor of the second degree, punishable as provided in s.  
2 775.082 or s. 775.083. However, the division may furnish to  
3 any employer copies of any report previously submitted by such  
4 employer, upon the request of such employer, and the division  
5 is authorized to charge therefor such reasonable fee as the  
6 division may by rule prescribe not to exceed the actual  
7 reasonable cost of the preparation of such copies. Fees  
8 received by the division for copies provided under this  
9 subsection shall be deposited to the credit of the Employment  
10 Security Administration Trust Fund.

11 Section 5. Contingent upon Senate Bill 2414 or similar  
12 legislation becoming a law, and effective upon this act  
13 becoming a law, subsection (1) of section 443.1715, Florida  
14 Statutes, is amended to read:

15 443.1715 Disclosure of information; confidentiality.--

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



1 qualified defense contractors and aviation-industry businesses  
2 authorized by s. 288.1045 and the tax refund program for  
3 qualified target industry businesses authorized by s. 288.106.  
4 Except as otherwise provided by law, public employees  
5 receiving such information must retain the confidentiality of  
6 such information. Any claimant, or the claimant's legal  
7 representative, at a hearing before an appeals referee or the  
8 commission shall be supplied with information from such  
9 records to the extent necessary for the proper presentation of  
10 her or his claim. Any employee or member of the commission or  
11 any employee of the division, or any other person receiving  
12 confidential information, who violates any provision of this  
13 subsection commits a misdemeanor of the second degree,  
14 punishable as provided in s. 775.082 or s. 775.083. However,  
15 the division may furnish to any employer copies of any report  
16 previously submitted by such employer, upon the request of  
17 such employer, and may furnish to any claimant copies of any  
18 report previously submitted by such claimant, upon the request  
19 of such claimant, and the division is authorized to charge  
20 therefor such reasonable fee as the division may by rule  
21 prescribe not to exceed the actual reasonable cost of the  
22 preparation of such copies. Fees received by the division for  
23 copies as provided in this subsection must be deposited to the  
24 credit of the Employment Security Administration Trust Fund.  
25       Section 6. The Legislature finds that it is a public  
26 necessity to provide confidentiality for certain information  
27 concerning businesses that is obtained through the  
28 administration of the tax refund, tax credit, and incentive  
29 programs for qualified defense contractors, qualified  
30 target-industry businesses, high-impact performance incentive  
31 businesses, quick-action closing fund businesses,

1 capital-investment tax-credit businesses, and  
2 aviation-industry businesses under sections 220.191, 288.1045,  
3 288.106, 288.108, and 288.1088, Florida Statutes. The  
4 disclosure of information such as trade secrets, tax  
5 identification numbers, analyses of gross receipts, the amount  
6 of taxes paid, the amount of capital investment, and the  
7 amount of employee wages paid, and the detailed documentation  
8 to substantiate such performance information, could injure a  
9 business in the marketplace by providing its competitors with  
10 detailed insights into the financial status and the strategic  
11 plans of the business, thereby diminishing the advantage that  
12 the business maintains over those who do not possess such  
13 information. The disclosure, prior to the award of a new  
14 Department of Defense contract, of information such as the  
15 number of new jobs to be created to perform the contract and  
16 the amount of refunds claimed could injure a business by  
17 providing competitors with detailed insights into the  
18 resources of the business and diminish the business's chances  
19 of obtaining a new Department of Defense contract. Some of the  
20 documentation supplied to support a business's tax refund and  
21 credit claims, or other incentive claims, could reveal private  
22 information, such as employee names and social security  
23 numbers, concerning that business's employees. Without this  
24 exemption, private-sector businesses, whose records generally  
25 are not required to be open to the public, might refrain from  
26 participating in these economic-development programs and thus  
27 would not be able to use the tax refunds available under the  
28 programs. If a business were unable to use the tax refund, it  
29 might choose to locate its employment and other investment  
30 activities outside the state, depriving the state and the  
31 public of the potential economic benefits associated with such

1 business activities in Florida. The harm to businesses in the  
2 marketplace and to the effective administration of these  
3 economic-development programs caused by the public disclosure  
4 of such information far outweighs the public benefits derived  
5 from its release. In addition, because the confidentiality  
6 provided by this act does not preclude the reporting of  
7 statistics in the aggregate concerning the programs, as well  
8 as the names of businesses participating in the programs and  
9 the amount of tax refunds and other incentives awarded and  
10 claimed, the public has access to information important to an  
11 assessment of the performance of those programs.

12 Section 7. Except as otherwise expressly provided in  
13 this act, this act shall take effect upon becoming a law.  
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15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
16 COMMITTEE SUBSTITUTE FOR  
17 Senate Bill 2430

18 The committee substitute replaces the original bill and  
19 creates a public records exemption relating to certain state  
20 economic development programs and incentives, including the  
21 Capital Investment Tax Credit Program under s. 220.191, F.S.;  
22 the Qualified Defense Contractor Tax Refund Program under s.  
23 288.1045, F.S.; the Qualified Target Industry Tax Refund  
24 Program under s. 288.106, F.S.; the high-impact performance  
25 incentives under s. 288.108, F.S.; and the Quick Action  
26 Closing Fund under s. 288.1088, F.S. The public records  
27 exemption is comparable to a public records exemption  
28 contained in a section of the Florida Statutes (s. 288.1066,  
29 F.S.) that stands repealed as of October 2, 2001. This  
30 committee substitute also makes changes to public records  
31 information-sharing provisions related to the administration  
of certain state economic development programs and incentives.