

By the Council for Competitive Commerce and Representative  
Kilmer

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 tax  
6           credit program, qualified defense contractors  
7           tax refund program, qualified target industry  
8           tax refund program, high impact sector  
9           performance program, and quick action closing  
10          fund program; specifying that the exemption  
11          does not preclude publication of aggregate data  
12          or release of names of qualifying businesses  
13          and refund amounts; providing that the public  
14          records exemption applies to qualified  
15          aviation-industry businesses; amending s.  
16          213.053, F.S.; authorizing release of certain  
17          additional information in administering certain  
18          tax credit or exemption programs; amending ss.  
19          443.171 and 443.1715, F.S.; including the  
20          refund program for aviation-industry businesses  
21          within certain exceptions to certain public  
22          records exemptions; providing a statement of  
23          public necessity; providing contingent effect;  
24          providing effective dates.

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

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

30           288.1067 Confidentiality of records.--

31

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

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

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

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

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

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

1 or nonachievement of the wage requirements of the tax refund,  
2 tax credit, or incentive agreement programs or of the job  
3 creation requirements of such programs.

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

12 (g) The amount of:

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

15 2. Corporate income taxes paid pursuant to chapter  
16 220;

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

19 4. Emergency excise taxes paid pursuant to chapter  
20 221;

21 5. Insurance premium taxes paid pursuant to chapter  
22 624;

23 6. Excise taxes paid on documents pursuant to chapter  
24 201; or

25 7. Ad valorem taxes paid, as defined in s. 220.03(1),  
26

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

1 evidence of the achievement or nonachievement of performance  
2 items contained in the tax refund agreement.

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

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

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

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

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

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

29 Section 2. Effective upon passage of House Bill 779 or  
30 similar legislation, subsection (5) is added to section  
31 288.1067, Florida Statutes, as created by this act, to read:

1           288.1067 Confidentiality of records.--  
2           (5) The provisions of this section apply to a  
3 qualified aviation-industry business as defined in s.  
4 288.1045. In addition, the amount of aviation fuel taxes paid  
5 pursuant to s. 206.9825, when reported on an application for  
6 certification as an aviation-industry business or paid during  
7 the term of the aviation-industry business' tax refund  
8 agreement, and for which the qualified aviation-industry  
9 business claims a tax refund under s. 288.1045, and is held as  
10 evidence of the achievement, or nonachievement, of performance  
11 items contained in the tax refund agreement, is confidential  
12 and exempt from the provisions of s. 119.07(1) and s. 24(a),  
13 Art. I of the State Constitution, when held by the Office of  
14 Tourism, Trade, and Economic Development or Enterprise  
15 Florida, Inc., and their employees or agents, for a period not  
16 to exceed the duration of the tax refund agreement.

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

19           213.053 Confidentiality and information sharing.--

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

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

29           2. Information regarding tax credits received by a  
30 business under s. 220.191 and exemptions or tax refunds  
31 received by a business under s. 212.08(5)(j) held by the

1 Office of Tourism, Trade, and Economic Development, or its  
2 employees or agents, in the administration and evaluation of  
3 the capital investment tax credit program authorized in s.  
4 220.191 and the semiconductor, defense, and space tax  
5 exemption program authorized in s. 212.08(5)(j).

6  
7 Disclosure of information under this subsection shall be  
8 pursuant to a written agreement between the executive director  
9 and the agency. Such agencies, governmental or  
10 nongovernmental, shall be bound by the same requirements of  
11 confidentiality as the Department of Revenue. Breach of  
12 confidentiality is a misdemeanor of the first degree,  
13 punishable as provided by s. 775.082 or s. 775.083.

14 Section 4. Contingent upon passage of House Bill 779  
15 and effective upon becoming a law, subsection (7) of section  
16 443.171, Florida Statutes, is amended to read:

17 443.171 Division and commission; powers and duties;  
18 rules; advisory council; records and reports; proceedings;  
19 state-federal cooperation.--

20 (7) RECORDS AND REPORTS.--Each employing unit shall  
21 keep true and accurate work records, containing such  
22 information as the division may prescribe. Such records shall  
23 be open to inspection and be subject to being copied by the  
24 division at any reasonable time and as often as may be  
25 necessary. The division or an appeals referee may require from  
26 any employing unit any sworn or unsworn reports, with respect  
27 to persons employed by it, deemed necessary for the effective  
28 administration of this chapter. However, a state or local  
29 governmental agency performing intelligence or  
30 counterintelligence functions need not report an employee if  
31 the head of such agency has determined that reporting the

1 employee could endanger the safety of the employee or  
2 compromise an ongoing investigation or intelligence mission.  
3 Information revealing the employing unit's or individual's  
4 identity thus obtained from the employing unit or from any  
5 individual pursuant to the administration of this chapter,  
6 shall, except to the extent necessary for the proper  
7 presentation of a claim or upon written authorization of the  
8 claimant who has a workers' compensation claim pending, be  
9 held confidential and exempt from the provisions of s.  
10 119.07(1). Such information shall be available only to public  
11 employees in the performance of their public duties, including  
12 employees of the Department of Education in obtaining  
13 information for the Florida Education and Training Placement  
14 Information Program and the Office of Tourism, Trade, and  
15 Economic Development in its administration of the ~~qualified~~  
16 ~~defense contractor~~ tax refund program for qualified defense  
17 contractors and aviation-industry businesses authorized by s.  
18 288.1045 and the qualified target industry business tax  
19 refund program authorized by s. 288.106. Any claimant, or the  
20 claimant's legal representative, at a hearing before an  
21 appeals referee or the commission shall be supplied with  
22 information from such records to the extent necessary for the  
23 proper presentation of her or his claim. Any employee or  
24 member of the commission or any employee of the division, or  
25 any other person receiving confidential information, who  
26 violates any provision of this subsection is guilty of a  
27 misdemeanor of the second degree, punishable as provided in s.  
28 775.082 or s. 775.083. However, the division may furnish to  
29 any employer copies of any report previously submitted by such  
30 employer, upon the request of such employer, and the division  
31 is authorized to charge therefor such reasonable fee as the

1 division may by rule prescribe not to exceed the actual  
2 reasonable cost of the preparation of such copies. Fees  
3 received by the division for copies provided under this  
4 subsection shall be deposited to the credit of the Employment  
5 Security Administration Trust Fund.

6 Section 5. Contingent upon passage of House Bill 779  
7 and effective upon becoming a law, subsection (1) of section  
8 443.1715, Florida Statutes, is amended to read:

9 443.1715 Disclosure of information; confidentiality.--

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



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

18       Section 6. The Legislature finds that it is a public  
19 necessity to provide confidentiality for certain information  
20 about businesses that is obtained through the administration  
21 of the tax refund, tax credit, and incentive programs for  
22 qualified defense contractors, qualified target industry  
23 businesses, high-impact performance incentive businesses,  
24 quick-action closing fund businesses, capital investment tax  
25 credit businesses, and aviation-industry businesses under ss.  
26 220.191, 288.1045, 288.106, 288.108, and 288.1088, Florida  
27 Statutes. The disclosure of information such as trade  
28 secrets, tax identification numbers, analyses of gross  
29 receipts, the amount of taxes paid, amount of capital  
30 investment, and the amount of employee wages paid, and the  
31 detailed documentation to substantiate such performance

1 information, could injure a business in the marketplace by  
2 providing its competitors with detailed insights into the  
3 financial status and the strategic plans of the business,  
4 thereby diminishing the advantage that the business maintains  
5 over those who do not possess such information. The  
6 disclosure, prior to the award of a new United States  
7 Department of Defense contract, of information such as the  
8 number of new jobs to be created to perform the contract and  
9 the amount of refunds claimed, could injure a business by  
10 providing competitors with detailed insights into the  
11 resources of the business and diminish the business' chances  
12 of obtaining a new United States Department of Defense  
13 contract. Some of the documentation supplied to support a  
14 business' tax refund and credit claims, or other incentive  
15 claims, could reveal private information about that business'  
16 employees such as names and social security numbers. Without  
17 this exemption, private-sector businesses, whose records  
18 generally are not required to be open to the public, might  
19 refrain from participating in these economic development  
20 programs and thus would not be able to use the tax refunds  
21 available under the programs. If a business were unable to use  
22 the tax refund, it might choose to locate its employment and  
23 other investment activities outside the state, depriving the  
24 state and the public of the potential economic benefits  
25 associated with such business activities in Florida. The harm  
26 to businesses in the marketplace and to the effective  
27 administration of these economic development programs caused  
28 by the public disclosure of such information far outweighs the  
29 public benefits derived from its release. In addition, because  
30 the confidentiality provided by this act does not preclude the  
31 reporting of statistics in the aggregate about the programs,

1 as well as the names of businesses participating in the  
2 programs and the amount of tax refunds and other incentives  
3 awarded and claimed, the public has access to information  
4 important to an assessment of the performance of those  
5 programs.

6           Section 7. Except as otherwise provided herein, this  
7 act shall take effect upon becoming a law.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31