

By the Committee on Commerce

577-418A-07

1                                           A bill to be entitled

2           An act relating to public records; amending s.

3           288.075, F.S.; defining the terms "proprietary

4           confidential business information" and "trade

5           secret"; extending the period of

6           confidentiality for trade secrets; extending

7           the period of confidentiality for a business's

8           federal employment identification number,

9           unemployment compensation account number, and

10          Florida sales tax registration number;

11          providing for the confidentiality of

12          information that would identify wages, taxes,

13          and other employment information; providing for

14          future legislative review and repeal under the

15          Open Government Sunset Review Act; providing a

16          statement of public necessity; repealing s.

17          288.1067, F.S., relating to the confidentiality

18          of records held by the Office of Tourism,

19          Trade, and Economic Development, Enterprise

20          Florida, Inc., or county or municipal

21          governmental entities, and their employees or

22          agents; providing an effective date.

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

26           Section 1. Section 288.075, Florida Statutes, is  
27 amended to read:

28           288.075 Confidentiality of records.--

29           (1) DEFINITIONS.--As used in this section, the term:

30           (a) "Economic development agency" means:

1           ~~1.(a)~~ The Office of Tourism, Trade, and Economic  
2 Development;  
3           ~~2.(b)~~ Any industrial development authority created in  
4 accordance with part III of chapter 159 or by special law;  
5           ~~3.(c)~~ Space Florida created in part II of chapter 331;  
6           ~~4.(d)~~ The public economic development agency of a  
7 county or municipality;  
8           ~~5.(e)~~ Any research and development authority created  
9 in accordance with part V of chapter 159; or  
10           ~~6.(f)~~ Any private agency, person, partnership,  
11 corporation, or business entity when authorized by the state,  
12 a municipality, or a county to promote the general business  
13 interests or industrial interests of the state or that  
14 municipality or county.  
15           (b) "Proprietary confidential business information"  
16 means information that is owned or controlled by the  
17 corporation, partnership, or person requesting confidentiality  
18 under this section; that is intended to be and is treated by  
19 the corporation, partnership, or person as private in that the  
20 disclosure of the information would cause harm to the business  
21 operations of the corporation, partnership, or person; that  
22 has not been disclosed unless disclosed pursuant to a  
23 statutory provision, an order of a court or administrative  
24 body, or a private agreement providing that the information  
25 may be released to the public; and that is information  
26 concerning:  
27           1. Business plans.  
28           2. Internal auditing controls and reports of internal  
29 auditors.  
30           3. Reports of external auditors for privately held  
31 companies.

1           (c) "Trade secret" has the same meaning as in s.  
2 688.002.

3           (2) PLANS, INTENTIONS, AND INTERESTS.--

4           (a) Upon written request from a private corporation,  
5 partnership, or person, information held by an economic  
6 development agency concerning plans, intentions, or interests  
7 of such private corporation, partnership, or person to locate,  
8 relocate, or expand any of its business activities in this  
9 state is confidential and exempt from s. 119.07(1) and s.  
10 24(a), Art. I of the State Constitution for 12 months after  
11 the date an economic development agency receives a request for  
12 confidentiality or until the information is otherwise  
13 disclosed, whichever occurs first.

14           (b)(3) An economic development agency may extend the  
15 period of confidentiality specified in paragraph (a)  
16 ~~subsection (2)~~ for up to an additional 12 months upon written  
17 request from the private corporation, partnership, or person  
18 who originally requested confidentiality under this section  
19 and upon a finding by the economic development agency that  
20 such private corporation, partnership, or person is still  
21 actively considering locating, relocating, or expanding its  
22 business activities in this state. Such a request for an  
23 extension in the period of confidentiality must be received  
24 prior to the expiration of any confidentiality originally  
25 provided under this section.

26           (c) A public officer or employee may not enter into a  
27 binding agreement with any corporation, partnership, or person  
28 who has requested confidentiality of information under this  
29 subsection until 90 days after the information is made public  
30 unless:

1           1. The public officer or employee is acting in an  
2 official capacity;

3           2. The agreement does not accrue to the personal  
4 benefit of such public officer or employee; and

5           3. In the professional judgment of the officer or  
6 employee, the agreement is necessary to effectuate an economic  
7 development project.

8           ~~(3)(4) TRADE SECRETS.--Trade secrets held by, as~~  
9 ~~defined by s. 812.081, contained in the records of an economic~~  
10 ~~development agency relating to the plans, intentions, or~~  
11 ~~interests of a corporation, partnership, or person who has~~  
12 ~~requested confidentiality pursuant to this section are~~  
13 ~~confidential and exempt from s. 119.07(1) and s. 24(a), Art. I~~  
14 ~~of the State Constitution for 10 years after the date an~~  
15 ~~economic development agency receives a request for~~  
16 ~~confidentiality or until otherwise disclosed, whichever occurs~~  
17 ~~first.~~

18           (4) PROPRIETARY CONFIDENTIAL BUSINESS  
19 INFORMATION.--Proprietary confidential business information  
20 held by an economic development agency is confidential and  
21 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
22 Constitution.

23           (5) IDENTIFICATION, ACCOUNT, AND REGISTRATION  
24 NUMBERS.--A federal employer identification number,  
25 unemployment compensation account number, or Florida sales tax  
26 registration number held by an economic development agency is  
27 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
28 of the State Constitution.

29           (6) ECONOMIC INCENTIVE PROGRAMS.--

30           (a) The following information held by an economic  
31 development agency pursuant to the administration of an

1 economic incentive program for qualified businesses is  
2 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
3 of the State Constitution, for a period not to exceed the  
4 duration of the tax refund, tax credit, or incentive  
5 agreement:

6 1. The percentage of the business's sales occurring  
7 outside this state and, for businesses applying under s.  
8 288.1045, the percentage of the business's gross receipts  
9 derived from Department of Defense contracts during the 5  
10 years immediately preceding the date the business's  
11 application is submitted.

12 2. The anticipated wages for the project jobs that the  
13 business plans to create, as reported on the application for  
14 certification.

15 3. The average wage actually paid by the business for  
16 those jobs created by the project or an employee's personal  
17 identifying information which is held as evidence of the  
18 achievement or nonachievement of the wage requirements of the  
19 tax refund, tax credit, or incentive agreement programs or of  
20 the job-creation requirements of such programs.

21 4. The amount of:

22 a. Taxes on sales, use, and other transactions which  
23 are paid pursuant to chapter 212;

24 b. Corporate income taxes paid pursuant to chapter  
25 220;

26 c. Intangible personal property taxes paid pursuant to  
27 chapter 199;

28 d. Emergency excise taxes paid pursuant to chapter  
29 221;

30 e. Insurance premium taxes paid pursuant to chapter  
31 624;

1           f. Excise taxes paid on documents pursuant to chapter  
2 201; or  
3           g. Ad valorem taxes paid, as defined in s. 220.03(1).  
4           (b)1. An economic development agency may release:  
5           a. Names of qualified businesses.  
6           b. The total number of jobs each business expects to  
7 create.  
8           c. The total number of jobs created by each business.  
9           d. The amount of tax refunds, tax credits, or  
10 incentives awarded to and claimed by each business.  
11           2. For a business applying for certification under s.  
12 288.1045 which is based on obtaining a new Department of  
13 Defense contract, the total number of jobs expected and the  
14 amount of tax refunds claimed may not be released until the  
15 new Department of Defense contract is awarded.  
16           (c) An economic development agency may publish  
17 statistics in the aggregate and classified so as to prevent  
18 the identification of a single qualified applicant.  
19           ~~(5) A public officer or employee may not enter into a~~  
20 ~~binding agreement with any corporation, partnership, or person~~  
21 ~~who has requested confidentiality of information pursuant to~~  
22 ~~this section until 90 days after the information is made~~  
23 ~~public unless:~~  
24           ~~(a) The public officer or employee is acting in an~~  
25 ~~official capacity;~~  
26           ~~(b) The agreement does not accrue to the personal~~  
27 ~~benefit of such public officer or employee; and~~  
28           ~~(c) In the professional judgment of the officer or~~  
29 ~~employee, the agreement is necessary to effectuate an economic~~  
30 ~~development project.~~  
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1           ~~(7)(6)~~ PENALTIES.--Any person who is an employee of an  
2 economic development agency who violates the provisions of  
3 this section commits a misdemeanor of the second degree,  
4 punishable as provided in s. 775.082 or s. 775.083.

5           (8) OPEN GOVERNMENT SUNSET REVIEW ACT.--This section  
6 is subject to the Open Government Sunset Review Act in  
7 accordance with s. 119.15 and shall stand repealed on October  
8 2, 2012, unless reviewed and saved from repeal through  
9 reenactment by the Legislature.

10           Section 2. The Legislature finds that it is a public  
11 necessity to provide confidentiality for certain information  
12 concerning businesses which is contained in records of an  
13 economic development agency or of a business participating in  
14 a state incentive program. The disclosure of information such  
15 as trade secrets, proprietary confidential business  
16 information, or other business information could injure a  
17 business in the marketplace by providing its competitors with  
18 detailed insights into the strategic plans of the business or  
19 with confidential personnel information, thereby diminishing  
20 the advantage that the business maintains over those that do  
21 not possess such information. Without these exemptions,  
22 private-sector businesses, whose records generally are not  
23 required to be open to the public, might refrain from  
24 participating in economic-development programs or tax-credit  
25 or tax-refund programs and thus would not be able to use the  
26 incentives available under the programs. If a business were  
27 unable to use the incentives, the business might choose to  
28 locate its business and other investment activities outside  
29 the state, which would deprive the state and the public of the  
30 potential economic benefits associated with such business  
31 activities in this state. The harm to businesses in the

1 marketplace and to the effective administration of  
2 economic-development and incentive programs caused by the  
3 public disclosure of such information far outweighs the public  
4 benefits derived from the release of the information.

5 Section 3. Section 288.1067, Florida Statutes, is  
6 repealed.

7 Section 4. This act shall take effect October 1, 2007.

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SENATE SUMMARY

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