

FOR CONSIDERATION 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.

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

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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:
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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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Extends for an unlimited duration the exemption from public-records requirements which is provided for trade secrets contained in records of an economic development agency. Extends the period of confidentiality provided for certain information concerning a business that participates in a state incentive program. Provides that proprietary confidential business information contained in records of an economic development agency is exempt from public-records requirements. Provides for future legislative review and repeal of the exemptions under the Open Government Sunset Review Act. Provides a finding of public necessity.