

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill combines and reorganizes two public records exemptions applicable to economic development agencies into one section of law. It also creates definitions in order to provide greater clarification for application of the exemptions.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act¹ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

Public Records Exemptions for Economic Development Agencies

Currently, upon written request, certain business records are confidential and exempt from public records requirements when held by an economic development agency.² Specifically, business plans, intentions, and interests to locate, relocate, or expand business activities in Florida are confidential and exempt for 12 months.³ The period of confidentiality may be extended for an additional 12 months if the business demonstrates that it is continuing its consideration to locate, relocate, or expand its activities in Florida.⁴ Also, trade secrets are confidential and exempt for 10 years.⁵ The public records exemption was reenacted during the 2006 Regular Session.

¹ Section 119.15, F.S.

² Section 288.075(1), F.S., defines "economic development agency" to mean the Office of Tourism, Trade, and Economic Development; any industrial development authority created in accordance with part III of chapter 159, F.S., or by special law; Space Florida created in part II of chapter 331, F.S.; the public economic development agency of a county or municipality; any research development authority created in accordance with part V of chapter 159, F.S.; or any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county.

³ Section 288.075(2), F.S.

⁴ Section 288.075(3), F.S.

In addition to this exemption, current law provides a public records exemption for certain information held by the Office of Tourism, Trade, and Economic Development (OTTED), Enterprise Florida, Inc., or county or municipal governmental entities, pursuant to an economic incentive program.⁶ Business information specifically made confidential and exempt includes:

- Employer identification numbers, unemployment compensation account numbers, and Florida sales tax registration numbers;
- Trade secrets;
- The percentage of non-state sales and the percentage of gross receipts from certain Department of Defense contracts;⁷
- Anticipated wages for new jobs to be created;
- The average wage actually paid by the business for new jobs created and detailed proprietary business information⁸ or employee personal identifying information, used to demonstrate wage and job creation requirements;⁹
- Proprietary business information¹⁰ regarding capital investment in certain circumstances; and
- The amount of certain taxes paid.¹¹

The information is protected during the period of time that a business participates in an economic incentive program with the exception of trade secrets, which remain confidential and exempt after the duration of the economic incentive agreement.

This exemption relates to the following incentive programs:

- Capital Investment Tax Credit program;¹²
- Qualified Defense Contractor (QDC) tax refund program;¹³
- Qualified Target Industry (QTI) tax refund program;¹⁴
- High Impact Performance Incentive (HIPI) grants program;¹⁵
- Quick Action Closing Fund;¹⁶ and
- Innovation Incentive Program.¹⁷

This exemption was scheduled for review under the Open Government Sunset Review Act during the 2006-2007 interim. During the 2006 Regular Session, however, the exemption was expanded to include records associated with the Innovation Incentive Program. As such, the Open Government Sunset Review date was extended from October 2, 2007 to October 2, 2011.¹⁸

⁵ Section 288.075(4), F.S.

⁶ Section 288.1067, F.S.

⁷ The public records exemption applies to the percentage of the business's gross receipts derived from Department of Defense contracts during the five years immediately preceding the date the business's application is submitted. Section 288.1067(1)(c), F.S.

⁸ The exemption does not provide a definition for "proprietary business information" which could be considered a broad term.

⁹ This exemption applies to proprietary business information regarding capital investment in eligible building and equipment made by the qualified business project when held by OTTED as evidence of the achievement or nonachievement of the investment requirements for the tax credit certification under s. 220.191, F.S.; for the high impact performance agreement under s. 288.108, F.S.; for the Quick Action Closing Fund agreement under s. 288.1088, F.S.; or for the Innovation Incentive Program agreement under s. 288.1089, F.S. Section 288.1067(1)(f), F.S.

¹⁰ *Id.*

¹¹ This includes taxes on sales, use, and other transactions paid pursuant to chapter 212, F.S.; corporate income taxes paid pursuant to chapter 220, F.S.; intangible personal property taxes paid pursuant to chapter 199, F.S.; emergency excise taxes paid pursuant to chapter 221, F.S.; insurance premium taxes paid pursuant to chapter 624, F.S.; excise taxes paid on documents pursuant to chapter 201, F.S.; or ad valorem taxes paid. Section 288.1067(1)(g), F.S.

¹² Section 220.191, F.S.

¹³ Section 288.1045, F.S.

¹⁴ Section 288.106, F.S.

¹⁵ Section 288.108, F.S.

¹⁶ Section 288.1088, F.S.

¹⁷ Section 288.1089, F.S.

¹⁸ Chapter 2006-59, L.O.F.

Interim Review of the Exemptions

Public debate during the 2006 Regular Session and related staff research indicated that the exemptions warranted further review. This bill is a result of that review.

EFFECT OF BILL

The bill combines and reorganizes the two exemptions into one section of law. It combines the exemptions to create five distinct categories of exemptions related to the administration of economic development by the state and local governments:

- Information related to Plans, Intentions and Interests;
- Trade Secrets;
- Proprietary Confidential Business Information;
- Identification, Account, and Registration Numbers; and
- Information related to Economic Incentive Programs.

These categories were created primarily to distinguish between the types of information held confidential and exempt and the duration of the exemption applicable to each category. Information submitted under the first and last categories is protected for a limited period, thereby eventually making general information related to policy decisions by state and local officials available to the public. Information from the remaining three categories is protected indefinitely in order to create consistency with other statutory provisions and industry practices.

The bill defines the term “proprietary confidential business information”¹⁹ and provides that the exemption for such information applies until the information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information. This definition was created based upon other definitions for the same term found throughout the statutes.

The bill provides for future review and repeal of the exemption on October 2, 2012. It also provides a public necessity statement as required by the State Constitution.

Finally, the exemption repeals s. 288.1067, F.S., because the public records exemption in that section is merged with the reorganized exemption in s. 288.075, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 288.075, F.S., by creating definitions, expanding the current public records exemption, and merging multiple public records exemptions for economic development agencies.

Section 2 provides a public necessity statement.

Section 3 repeals s. 288.1067, F.S., which provides a public records exemption for economic development agencies.

Section 4 provides an effective date of July 1, 2007.

¹⁹ Proprietary confidential business information means information that is owned or controlled by the corporation, partnership, or person requesting confidentiality under this section; that is intended to be and is treated by the corporation, partnership, or person as private in that the disclosure of the information would cause harm to its business operations; that has not been disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning: business plans; internal auditing controls and reports of internal auditors; and reports of external auditors for privately held companies.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "FISCAL COMMENTS" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "FISCAL COMMENTS" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on economic development agencies, because staff responsible for complying with public records requests will require training related to changes made to the current public records exemptions. In addition, economic development agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. These agencies, however, would absorb the costs as they are part of their day-to-day responsibilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created or substantially amended public records or public meetings exemption. The bill expands the current public records exemption; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created or substantially amended public records or public meetings

exemption. The bill expands the current public records exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 18, 2007, the Government Efficiency & Accountability Council adopted two amendments to PCB GEAC 07-02. The amendments:

- Expand the definition of economic development agency, contained in the bill, to include county or municipal officers or employees who have economic development responsibilities, when these local governments do not have a specific agency responsible for those tasks.
- Add the State Communications Services Tax to the list of tax refunds protected from public disclosure.