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HB 7201

2007 Legislature

1 A bill to be entitled
2 An act relating to public records exemptions for economic
3 development agencies; amending s. 288.075, F.S., which
4 provides an exemption from public records requirements for
5 information related to business activities and trade
6 secrets held by an economic development agency; defining
7 the terms "proprietary confidential business information"
8 and "trade secret"; reorganizing the exemption; extending
9 the period of confidentiality for trade secrets; providing
10 a specific exemption for proprietary confidential business
11 information; providing for expiration of the exemption;
12 providing a specific exemption for federal employer
13 identification numbers, unemployment compensation account
14 numbers, and Florida sales tax registration numbers held
15 by an economic development agency; providing a specific
16 exemption for specified information held by an economic
17 development agency pursuant to the administration of an
18 economic incentive program for qualified businesses;
19 providing for limited duration of the exemption; providing
20 penalties; providing for future legislative review and
21 repeal under the Open Government Sunset Review Act;
22 providing a statement of public necessity; repealing s.
23 288.1067, F.S., relating to the confidentiality of records
24 held by the Office of Tourism, Trade, and Economic
25 Development, Enterprise Florida, Inc., or county or
26 municipal governmental entities pursuant to specified
27 incentive programs; providing an effective date.

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

30
31 Section 1. Section 288.075, Florida Statutes, is amended
32 to read:

33 288.075 Confidentiality of records.--

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

35 (a) "Economic development agency" means:

36 1. ~~(a)~~ The Office of Tourism, Trade, and Economic
37 Development;

38 2. ~~(b)~~ Any industrial development authority created in
39 accordance with part III of chapter 159 or by special law;

40 3. ~~(c)~~ Space Florida created in part II of chapter 331;

41 4. ~~(d)~~ The public economic development agency of a county
42 or municipality or, if the county or municipality does not have
43 a public economic development agency, the county or municipal
44 officers or employees assigned the duty to promote the general
45 business interests or industrial interests of that county or
46 municipality or the responsibilities related thereto;

47 5. ~~(e)~~ Any research and development authority created in
48 accordance with part V of chapter 159; or

49 6. ~~(f)~~ Any private agency, person, partnership,
50 corporation, or business entity when authorized by the state, a
51 municipality, or a county to promote the general business
52 interests or industrial interests of the state or that
53 municipality or county.

54 (b) "Proprietary confidential business information" means
55 information that is owned or controlled by the corporation,
56 partnership, or person requesting confidentiality under this

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57 section; that is intended to be and is treated by the
 58 corporation, partnership, or person as private in that the
 59 disclosure of the information would cause harm to the business
 60 operations of the corporation, partnership, or person; that has
 61 not been disclosed unless disclosed pursuant to a statutory
 62 provision, an order of a court or administrative body, or a
 63 private agreement providing that the information may be released
 64 to the public; and that is information concerning:

- 65 1. Business plans.
- 66 2. Internal auditing controls and reports of internal
 67 auditors.
- 68 3. Reports of external auditors for privately held
 69 companies.

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

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

72 (a) Upon written request from a private corporation,
 73 partnership, or person, information held by an economic
 74 development agency concerning plans, intentions, or interests of
 75 such private corporation, partnership, or person to locate,
 76 relocate, or expand any of its business activities in this state
 77 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 78 I of the State Constitution for 12 months after the date an
 79 economic development agency receives a request for
 80 confidentiality or until the information is otherwise disclosed,
 81 whichever occurs first.

82 (b)~~(3)~~ An economic development agency may extend the
 83 period of confidentiality specified in paragraph (a) ~~subsection~~
 84 ~~(2)~~ for up to an additional 12 months upon written request from

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85 the private corporation, partnership, or person who originally
 86 requested confidentiality under this section and upon a finding
 87 by the economic development agency that such private
 88 corporation, partnership, or person is still actively
 89 considering locating, relocating, or expanding its business
 90 activities in this state. Such a request for an extension in the
 91 period of confidentiality must be received prior to the
 92 expiration of any confidentiality originally provided under this
 93 section.

94 (c) A public officer or employee may not enter into a
 95 binding agreement with any corporation, partnership, or person
 96 who has requested confidentiality of information under this
 97 subsection until 90 days after the information is made public
 98 unless:

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

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

103 3. In the professional judgment of the officer or
 104 employee, the agreement is necessary to effectuate an economic
 105 development project.

106 ~~(3)(4) TRADE SECRETS.--Trade secrets held by, as defined~~
 107 ~~by s. 812.081, contained in the records of an economic~~
 108 ~~development agency relating to the plans, intentions, or~~
 109 ~~interests of a corporation, partnership, or person who has~~
 110 ~~requested confidentiality pursuant to this section are~~
 111 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 112 of the State Constitution ~~for 10 years after the date an~~

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113 ~~economic development agency receives a request for~~
114 ~~confidentiality or until otherwise disclosed, whichever occurs~~
115 ~~first.~~

116 (4) PROPRIETARY CONFIDENTIAL BUSINESS
117 INFORMATION.--Proprietary confidential business information held
118 by an economic development agency is confidential and exempt
119 from s. 119.07(1) and s. 24(a), Art. I of the State
120 Constitution, until such information is otherwise publicly
121 available or is no longer treated by the proprietor as
122 proprietary confidential business information.

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

129 (6) ECONOMIC INCENTIVE PROGRAMS.--

130 (a) The following information held by an economic
131 development agency pursuant to the administration of an economic
132 incentive program for qualified businesses is confidential and
133 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
134 Constitution for a period not to exceed the duration of the
135 incentive agreement, including an agreement authorizing a tax
136 refund or tax credit, or upon termination of the incentive
137 agreement:

138 1. The percentage of the business's sales occurring
139 outside this state and, for businesses applying under s.
140 288.1045, the percentage of the business's gross receipts

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141 derived from Department of Defense contracts during the 5 years
142 immediately preceding the date the business's application is
143 submitted.

144 2. The anticipated wages for the project jobs that the
145 business plans to create, as reported on the application for
146 certification.

147 3. The average wage actually paid by the business for
148 those jobs created by the project or an employee's personal
149 identifying information which is held as evidence of the
150 achievement or nonachievement of the wage requirements of the
151 tax refund, tax credit, or incentive agreement programs or of
152 the job creation requirements of such programs.

153 4. The amount of:

154 a. Taxes on sales, use, and other transactions paid
155 pursuant to chapter 212;

156 b. Corporate income taxes paid pursuant to chapter 220;

157 c. Intangible personal property taxes paid pursuant to
158 chapter 199;

159 d. Emergency excise taxes paid pursuant to chapter 221;

160 e. Insurance premium taxes paid pursuant to chapter 624;

161 f. Excise taxes paid on documents pursuant to chapter 201;

162 g. Ad valorem taxes paid, as defined in s. 220.03(1); or

163 h. State communications services taxes paid pursuant to
164 chapter 202.

165 (b)1. An economic development agency may release:

166 a. Names of qualified businesses.

167 b. The total number of jobs each business expects to
168 create.

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169 c. The total number of jobs created by each business.
 170 d. The amount of tax refunds, tax credits, or incentives
 171 awarded to and claimed by each business.
 172 2. For a business applying for certification under s.
 173 288.1045 which is based on obtaining a new Department of Defense
 174 contract, the total number of jobs expected and the amount of
 175 tax refunds claimed may not be released until the new Department
 176 of Defense contract is awarded.
 177 (c) An economic development agency may publish statistics
 178 in the aggregate and classified so as to prevent the
 179 identification of a single qualified applicant.
 180 ~~(5) A public officer or employee may not enter into a~~
 181 ~~binding agreement with any corporation, partnership, or person~~
 182 ~~who has requested confidentiality of information pursuant to~~
 183 ~~this section until 90 days after the information is made public~~
 184 ~~unless:~~
 185 ~~(a) The public officer or employee is acting in an~~
 186 ~~official capacity;~~
 187 ~~(b) The agreement does not accrue to the personal benefit~~
 188 ~~of such public officer or employee; and~~
 189 ~~(c) In the professional judgment of the officer or~~
 190 ~~employee, the agreement is necessary to effectuate an economic~~
 191 ~~development project.~~
 192 (7) ~~(6)~~ PENALTIES.--Any person who is an employee of an
 193 economic development agency who violates the provisions of this
 194 section commits a misdemeanor of the second degree, punishable
 195 as provided in s. 775.082 or s. 775.083.
 196 (8) LEGISLATIVE REVIEW OF EXEMPTIONS.--This section is

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197 subject to the Open Government Sunset Review Act in accordance
198 with s. 119.15 and shall stand repealed on October 2, 2012,
199 unless reviewed and saved from repeal through reenactment by the
200 Legislature.

201 Section 2. The Legislature finds that it is a public
202 necessity to provide confidentiality for certain information
203 concerning businesses participating in a state incentive program
204 held by an economic development agency. The disclosure of
205 information such as trade secrets, proprietary confidential
206 business information, or other business information could injure
207 a business in the marketplace by providing its competitors with
208 detailed insights into the strategic plans of the business or
209 with confidential personnel information, thereby diminishing the
210 advantage that the business maintains over those that do not
211 possess such information. Without these exemptions, private-
212 sector businesses, whose records generally are not required to
213 be open to the public, might refrain from participating in
214 economic development programs or tax credit or tax refund
215 programs and thus would not be able to use the incentives
216 available under the programs. If a business were unable to use
217 the incentives, the business might choose to locate its business
218 and other investment activities outside the state, which would
219 deprive the state and the public of the potential economic
220 benefits associated with such business activities in this state.
221 The harm to businesses in the marketplace and to the effective
222 administration of economic development and incentive programs
223 caused by the public disclosure of such information far
224 outweighs the public benefits derived from the release of the

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225 | information.

226 | Section 3. Section 288.1067, Florida Statutes, is
227 | repealed.

228 | Section 4. This act shall take effect July 1, 2007.