

By the Committee on Commerce and Tourism

577-01554-12

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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 288.075, F.S., which
4 provides public records exemptions for information
5 held by economic development agencies; saving from
6 repeal the exemption concerning plans, intentions, or
7 interests of a private corporation, partnership, or
8 person to locate, relocate, or expand any of its
9 business activities in this state; providing that the
10 exemption applies if a request for confidentiality is
11 made before an economic incentives agreement is
12 signed; revising the duration of the period in which
13 information may remain confidential and exempt from
14 disclosure; saving from repeal the exemption for trade
15 secrets; saving from repeal the exemption for
16 proprietary confidential business information; saving
17 from repeal the exemption for identification, account,
18 and registration numbers and sales, wage, and tax data
19 relating to a recipient of an economic development
20 incentive; providing that the taxes paid by businesses
21 participating in an economic incentive program may be
22 disclosed in the aggregate; authorizing the disclosure
23 of specified information relating to a business 90
24 days after an economic incentive agreement is signed;
25 removing the scheduled repeal of the exemptions;
26 providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 288.075, Florida Statutes, is amended to
31 read:

32 288.075 Confidentiality of records.—

33 (1) DEFINITIONS.—As used in this section, the term:

34 (a) "Economic development agency" means:

35 1. The Department of Economic Opportunity;

36 2. Any industrial development authority created in
37 accordance with part III of chapter 159 or by special law;

38 3. Space Florida created in part II of chapter 331;

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

45 5. Any research and development authority created in
46 accordance with part V of chapter 159; or

47 6. Any private agency, person, partnership, corporation, or
48 business entity when authorized by the state, a municipality, or
49 a county to promote the general business interests or industrial
50 interests of the state or that municipality or county.

51 (b) "Proprietary confidential business information" means
52 information that is owned or controlled by the corporation,
53 partnership, or person requesting confidentiality under this
54 section; that is intended to be and is treated by the
55 corporation, partnership, or person as private in that the
56 disclosure of the information would cause harm to the business
57 operations of the corporation, partnership, or person; that has
58 not been disclosed unless disclosed pursuant to a statutory

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59 provision, an order of a court or administrative body, or a
60 private agreement providing that the information may be released
61 to the public; and that is information concerning:

62 1. Business plans.

63 2. Internal auditing controls and reports of internal
64 auditors.

65 3. Reports of external auditors for privately held
66 companies.

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

68 (2) PLANS, INTENTIONS, AND INTERESTS.—

69 (a) ~~If Upon written request from~~ a private corporation,
70 partnership, or person requests in writing before an economic
71 incentive agreement is signed that,~~information held by an~~
72 economic development agency maintain the confidentiality of
73 information concerning plans, intentions, or interests of a such
74 private corporation, partnership, or person to locate, relocate,
75 or expand any of its business activities in this state, the
76 information is confidential and exempt from s. 119.07(1) and s.
77 24(a), Art. I of the State Constitution. The information will
78 remain confidential and exempt for 12 months after the date an
79 economic development agency receives a request for
80 confidentiality, for 90 days after the signing of an economic
81 incentive agreement, or until the information is otherwise
82 disclosed, whichever occurs first.

83 ~~(b) An economic development agency may extend the period of~~
84 ~~confidentiality specified in paragraph (a) for up to an~~
85 ~~additional 12 months upon written request from the private~~
86 ~~corporation, partnership, or person who originally requested~~
87 ~~confidentiality under this section and upon a finding by the~~

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

94 (b)~~(e)~~ 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 of
102 such public officer or employee; and
- 103 3. In the professional judgment of the officer or employee,
104 the agreement is necessary to effectuate an economic development
105 project.

106 (3) TRADE SECRETS.—Trade secrets held by an economic
107 development agency are confidential and exempt from s. 119.07(1)
108 and s. 24(a), Art. I of the State Constitution.

109 (4) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—
110 Proprietary confidential business information held by an
111 economic development agency is confidential and exempt from s.
112 119.07(1) and s. 24(a), Art. I of the State Constitution, until
113 such information is otherwise publicly available or is no longer
114 treated by the proprietor as proprietary confidential business
115 information.

116 (5) IDENTIFICATION, ACCOUNT, AND REGISTRATION NUMBERS.—A

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117 federal employer identification number, unemployment
118 compensation account number, or Florida sales tax registration
119 number held by an economic development agency is confidential
120 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
121 Constitution.

122 (6) ECONOMIC INCENTIVE PROGRAMS.—

123 (a) The following information held by an economic
124 development agency pursuant to the administration of an economic
125 incentive program for qualified businesses is confidential and
126 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
127 Constitution for a period not to exceed the duration of the
128 incentive agreement, including an agreement authorizing a tax
129 refund or tax credit, or upon termination of the incentive
130 agreement:

131 1. The percentage of the business's sales occurring outside
132 this state and, for businesses applying under s. 288.1045, the
133 percentage of the business's gross receipts derived from
134 Department of Defense contracts during the 5 years immediately
135 preceding the date the business's application is submitted.

136 ~~2. The anticipated wages for the project jobs that the~~
137 ~~business plans to create, as reported on the application for~~
138 ~~certification.~~

139 ~~2.3. The average wage actually paid by the business for~~
140 ~~those jobs created by the project or~~ An individual employee's
141 personal identifying information that ~~which~~ is held as evidence
142 of the achievement or nonachievement of the wage requirements of
143 the tax refund, tax credit, or incentive agreement programs or
144 of the job creation requirements of such programs.

145 ~~3.4.~~ The amount of:

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- 146 a. Taxes on sales, use, and other transactions paid
147 pursuant to chapter 212;
- 148 b. Corporate income taxes paid pursuant to chapter 220;
- 149 c. Intangible personal property taxes paid pursuant to
150 chapter 199;
- 151 d. Insurance premium taxes paid pursuant to chapter 624;
- 152 e. Excise taxes paid on documents pursuant to chapter 201;
- 153 f. Ad valorem taxes paid, as defined in s. 220.03(1); or
- 154 g. State communications services taxes paid pursuant to
155 chapter 202.

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157 However, an economic development agency may disclose in the
158 annual incentives report required under s. 288.907 the aggregate
159 amount of each tax identified in this subparagraph and paid by
160 all businesses participating in each economic incentive program.

161 (b)1. The following information held by an economic
162 development agency relating to a specific business participating
163 in an economic incentive program is not confidential or exempt
164 from disclosure 90 days after an economic incentive agreement is
165 signed with that business ~~An economic development agency may~~
166 ~~release:~~

- 167 a. The name ~~names~~ of the qualified business ~~businesses~~.
- 168 b. The total number of jobs the ~~each~~ business committed
169 ~~expects~~ to create or retain.
- 170 c. The total number of jobs created or retained by the ~~each~~
171 business.
- 172 d. Notwithstanding s. 213.053(2), the amount of tax
173 refunds, tax credits, or incentives awarded to, ~~and~~ claimed by,
174 or, if applicable, refunded to the state by the ~~each~~ business.

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175 e. The anticipated total annual wages of employees the
176 business committed to hire or retain.

177 2. For a business applying for certification under s.
178 288.1045 which is based on obtaining a new Department of Defense
179 contract, the total number of jobs expected and the amount of
180 tax refunds claimed may not be released until the new Department
181 of Defense contract is awarded.

182 ~~(c) An economic development agency may publish statistics~~
183 ~~in the aggregate and classified so as to prevent the~~
184 ~~identification of a single qualified applicant.~~

185 (7) PENALTIES.—Any person who is an employee of an economic
186 development agency who violates the provisions of this section
187 commits a misdemeanor of the second degree, punishable as
188 provided in s. 775.082 or s. 775.083.

189 ~~(8) LEGISLATIVE REVIEW OF EXEMPTIONS.—This section is~~
190 ~~subject to the Open Government Sunset Review Act in accordance~~
191 ~~with s. 119.15 and shall stand repealed on October 2, 2012,~~
192 ~~unless reviewed and saved from repeal through reenactment by the~~
193 ~~Legislature.~~

194 Section 2. This act shall take effect upon becoming a law.