

By the Committees on Commerce and Tourism; and Commerce and Tourism

577-02027-12

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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 incentive agreement is signed;
12 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 180
24 days after the final project order for an economic
25 incentive agreement is issued, until a date specified
26 in the final project order, or if the information is
27 otherwise disclosed, whichever occurs first; removing
28 the scheduled repeal of the exemptions; providing an
29 effective date.

577-02027-12

20121206c1

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

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

288.075 Confidentiality of records.—

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

(a) "Economic development agency" means:

1. The Department of Economic Opportunity;

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

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

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

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

6. 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.

(b) "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

577-02027-12

20121206c1

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) ~~If Upon written request from~~ a private corporation,
73 partnership, or person requests in writing before an economic
74 incentive agreement is signed that, ~~information held by an~~
75 economic development agency maintain the confidentiality of
76 information concerning plans, intentions, or interests of a such
77 private corporation, partnership, or person to locate, relocate,
78 or expand any of its business activities in this state, the
79 information is confidential and exempt from s. 119.07(1) and s.
80 24(a), Art. I of the State Constitution. The information will
81 remain confidential and exempt for 12 months after the date an
82 economic development agency receives a request for
83 confidentiality, for 180 days after a final project order for a
84 signed economic incentive agreement is issued, until a date
85 specified in the final project order, or until the information
86 is otherwise disclosed, whichever occurs first.

87 ~~(b) An economic development agency may extend the period of~~

577-02027-12

20121206c1

88 ~~confidentiality specified in paragraph (a) for up to an~~
89 ~~additional 12 months upon written request from the private~~
90 ~~corporation, partnership, or person who originally requested~~
91 ~~confidentiality under this section and upon a finding by the~~
92 ~~economic development agency that such private corporation,~~
93 ~~partnership, or person is still actively considering locating,~~
94 ~~relocating, or expanding its business activities in this state.~~
95 ~~Such a request for an extension in the period of confidentiality~~
96 ~~must be received prior to the expiration of any confidentiality~~
97 ~~originally provided under this section.~~

98 (b) ~~(e)~~ A public officer or employee may not enter into a
99 binding agreement with any corporation, partnership, or person
100 who has requested confidentiality of information under this
101 subsection until 90 days after the information is made public
102 unless:

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

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

107 3. In the professional judgment of the officer or employee,
108 the agreement is necessary to effectuate an economic development
109 project.

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

113 (4) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—
114 Proprietary confidential business information held by an
115 economic development agency is confidential and exempt from s.
116 119.07(1) and s. 24(a), Art. I of the State Constitution, until

577-02027-12

20121206c1

117 such information is otherwise publicly available or is no longer
118 treated by the proprietor as proprietary confidential business
119 information.

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

126 (6) ECONOMIC INCENTIVE PROGRAMS.—

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

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

140 ~~2. The anticipated wages for the project jobs that the~~
141 ~~business plans to create, as reported on the application for~~
142 ~~certification.~~

143 ~~2.3. The average wage actually paid by the business for~~
144 ~~those jobs created by the project or~~ An individual employee's
145 personal identifying information that ~~which~~ is held as evidence

577-02027-12

20121206c1

146 of the achievement or nonachievement of the wage requirements of
 147 the tax refund, tax credit, or incentive agreement programs or
 148 of the job creation requirements of such programs.

149 ~~3.4.~~ The amount of:

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

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

165 (b)1. The following information held by an economic
 166 development agency relating to a specific business participating
 167 in an economic incentive program is not confidential or exempt
 168 from disclosure 180 days after a final project order for an
 169 economic incentive agreement is issued, until a date specified
 170 in the final project order, or if the information is otherwise
 171 disclosed, whichever occurs first ~~An economic development agency~~
 172 ~~may release:~~

- 173 a. The name ~~names~~ of the qualified business ~~businesses~~.
- 174 b. The total number of jobs the ~~each~~ business committed

577-02027-12

20121206c1

175 ~~expects~~ to create or retain.

176 c. The total number of jobs created or retained by the each
177 business.

178 d. Notwithstanding s. 213.053(2), the amount of tax
179 refunds, tax credits, or incentives awarded to, ~~and~~ claimed by,
180 or, if applicable, refunded to the state by the each business.

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

183 2. For a business applying for certification under s.
184 288.1045 which is based on obtaining a new Department of Defense
185 contract, the total number of jobs expected and the amount of
186 tax refunds claimed may not be released until the new Department
187 of Defense contract is awarded.

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

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

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

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