

By Senator Hukill

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1 A bill to be entitled
2 An act relating to the economic development incentive
3 application process; amending s. 288.061, F.S.;
4 requiring an applicant to provide a surety bond to the
5 Department of Economic Opportunity before the
6 applicant receives incentive awards through the Quick
7 Action Closing Fund or the Innovation Incentive
8 Program; requiring the contract or agreement to
9 provide that the bond remain in effect until all
10 conditions have been satisfied; providing that the
11 department may require the bond to cover the entire
12 contracted amount or allow for bonds to be renewed
13 upon completion of certain performance measures;
14 requiring the contract or agreement to provide that
15 funds are contingent upon receipt of the surety bond;
16 requiring the contract or agreement to provide that up
17 to half of the premium payment on the bond may be paid
18 from the award up to a certain amount; requiring an
19 applicant to notify the department of premium
20 payments; providing for certain notice requirements
21 upon cancellation or nonrenewal by a bonding or
22 insurance company; providing that the cancellation of
23 the surety bond violates the contract or agreement;
24 providing an exception; providing for a waiver if
25 certain information is provided; providing that if the
26 department grants a waiver, the contract or agreement
27 must provide for securing the award in a certain form;
28 requiring the contract or agreement to provide that
29 the release of funds is contingent upon satisfying

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30 certain requirements; requiring the irrevocable letter
31 of credit, trust, or security agreement to remain in
32 effect until certain conditions have been satisfied;
33 providing that the state may bring suit upon default
34 or upon a violation of this section; providing that
35 the department may adopt rules to implement this
36 section; providing an effective date.
37

38 Be It Enacted by the Legislature of the State of Florida:
39

40 Section 1. Subsection (2) of section 288.061, Florida
41 Statutes, is amended, present subsection (3) of that section is
42 redesignated as subsection (5), and new subsections (3), (4),
43 and (6) are added to that section, to read:

44 288.061 Economic development incentive application
45 process.—

46 (2) Within 10 business days after the department receives
47 the submitted economic development incentive application, the
48 executive director shall approve or disapprove the application
49 and issue a letter of certification to the applicant which
50 includes a justification of that decision, unless the business
51 requests an extension of that time.

52 (a) The contract or agreement with the applicant must ~~shall~~
53 specify the total amount of the award, the performance
54 conditions that must be met to obtain the award, the schedule
55 for payment, and sanctions that would apply for failure to meet
56 performance conditions. The department may enter into one
57 agreement or contract covering all of the state incentives that
58 are being provided to the applicant. The contract must provide

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59 that release of funds is contingent upon sufficient
60 appropriation of funds by the Legislature.

61 (b) The release of funds for the incentive or incentives
62 awarded to the applicant depends upon the statutory requirements
63 of the particular incentive program, except as provided in
64 subsection (3).

65 (3) (a) In order to receive an incentive under s. 288.1088
66 or s. 288.1089, an applicant must provide the department with a
67 surety bond, issued by an eligible or authorized bonding company
68 or insurance company, for the amount of the award under the
69 incentive contract or agreement. Funds may not be paid to an
70 applicant until the department certifies compliance with this
71 subsection.

72 1. The contract or agreement must provide that the bond
73 remain in effect until all performance conditions in the
74 contract or agreement have been satisfied. The department may
75 require the bond to cover the entire amount of the contract or
76 agreement or allow for a bond to be renewed upon the completion
77 of scheduled performance measurements specified in the contract
78 or agreement. The contract or agreement must provide that the
79 release of any funds is contingent upon receipt by the
80 department of the surety bond.

81 2. The contract or agreement must provide that up to half
82 of the premium payment on the surety bond may be paid from the
83 award amount, not to exceed 3 percent of the award.

84 3. The applicant shall notify the department at least 10
85 days before each premium payment is due.

86 4. Any notice of cancellation or nonrenewal issued by a
87 bonding company or insurance company must comply with the notice

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88 requirements of s. 626.9201. If the applicant receives a notice
89 of cancellation or nonrenewal, the applicant must immediately
90 notify the department.

91 5. The cancellation of the surety bond is a violation of
92 the contract or agreement between the applicant and the
93 department. The department is released from any obligation to
94 make future scheduled payments unless the applicant is able to
95 secure a new surety bond or comply with the requirements of
96 paragraphs (b) and (c) within 90 days before the effective date
97 of the cancellation.

98 (b) If an applicant is unable to secure a surety bond or
99 can demonstrate that obtaining a bond is unreasonable in cost,
100 the department may waive the requirements specified in paragraph
101 (a) by certifying in writing to the Governor, President of the
102 Senate, and Speaker of the House of Representatives the
103 following information:

104 1. An explanation stating the reasons why the applicant
105 could not obtain a bond, to the extent such information is not
106 confidential under s. 288.075;

107 2. A description of the economic benefits expected to be
108 generated by the incentive award which indicates that the
109 project warrants waiver of the requirement; and

110 3. An evaluation of the quality and value of the applicant
111 which supports the selection of the alternative securitization
112 under paragraph (c). The department's evaluation must consider
113 the following information when determining the form for securing
114 the award amount:

115 a. A financial analysis of the company, including an
116 evaluation of the company's short-term liquidity ratio as

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117 measured by its assets to liability, the company's profitability
118 ratio, and the company's long-term solvency as measured by its
119 debt-to-equity ratio;

120 b. The historical market performance of the company;

121 c. A review of any independent evaluations of the company;

122 d. A review of the latest audit of the company's financial
123 statement and the related auditor's management letter; and

124 e. A review of any other types of audits that are related
125 to the internal and management controls of the company.

126 (c)1. If the department grants a waiver under paragraph
127 (b), the incentives contract or agreement must provide for
128 securing the award amount in one of the following forms:

129 a. An irrevocable letter of credit issued by a financial
130 institution, as defined in s. 655.005, with an office physically
131 located within the state, and the deposits of which are
132 federally insured;

133 b. Cash or securities held in trust by a financial
134 institution, as defined in s. 655.005, and subject to a control
135 agreement; or

136 c. A secured transaction in collateral under the control or
137 possession of the applicant for the value of the award amount.
138 The department is authorized to negotiate the terms and
139 conditions of the security agreement.

140 2. The contract or agreement must provide that the release
141 of any funds is contingent upon the receipt of documentation by
142 the department which satisfies all of the requirements found in
143 this paragraph. Funds may not be paid to the applicant until the
144 department certifies compliance with this subsection.

145 3. The irrevocable letter of credit, trust, or security

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146 agreement must remain in effect until all performance conditions
147 specified in the contract or agreement have been satisfied.
148 Failure to comply with this provision results in a violation of
149 the contract or agreement between the applicant and the
150 department and releases the department from any obligation to
151 make future scheduled payments.

152 (4) In the event of default on the performance conditions
153 specified in the contract or agreement, or violation of any of
154 the provisions found in this section, the state may, in addition
155 to any other remedy provided by law, bring suit to enforce its
156 interest.

157 (5)~~(3)~~ The department shall validate contractor
158 performance. Such validation shall be reported in the annual
159 incentive report required under s. 288.907.

160 (6) The department is authorized to adopt rules to
161 implement this section.

162 Section 2. This act shall take effect July 1, 2013.