

By the Committee on Commerce and Tourism; and 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 an insurer;
22 providing that the cancellation of the surety bond
23 violates the contract or agreement; providing an
24 exception; providing for a waiver if certain
25 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 for a waiver of the surety bond or other
34 security if certain information is provided and the
35 department determines it to be in the best interest of
36 the state; providing that the waiver of the surety
37 bond or other security, for funding in excess of \$5
38 million, must be approved by the Legislative Budget
39 Commission; providing that the state may bring suit
40 upon default or upon a violation of this section;
41 providing that the department may adopt rules to
42 implement this section; providing an effective date.
43

44 Be It Enacted by the Legislature of the State of Florida:
45

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

50 288.061 Economic development incentive application
51 process.—

52 (2) Within 10 business days after the department receives
53 the submitted economic development incentive application, the
54 executive director shall approve or disapprove the application
55 and issue a letter of certification to the applicant which
56 includes a justification of that decision, unless the business
57 requests an extension of that time.

58 (a) The contract or agreement with the applicant must ~~shall~~

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59 specify the total amount of the award, the performance
60 conditions that must be met to obtain the award, the schedule
61 for payment, and sanctions that would apply for failure to meet
62 performance conditions. The department may enter into one
63 agreement or contract covering all of the state incentives that
64 are being provided to the applicant. The contract must provide
65 that release of funds is contingent upon sufficient
66 appropriation of funds by the Legislature.

67 (b) The release of funds for the incentive or incentives
68 awarded to the applicant depends upon the statutory requirements
69 of the particular incentive program, except as provided in
70 subsection (3).

71 (3) (a) In order to receive an incentive under s. 288.1088
72 or s. 288.1089, an applicant must provide the department with a
73 surety bond, issued by an insurer authorized to do business in
74 this state, for the amount of the award under the incentive
75 contract or agreement. Funds may not be paid to an applicant
76 until the department certifies compliance with this subsection.

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

86 2. The contract or agreement must provide that up to half
87 of the premium payment on the surety bond may be paid from the

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88 award amount, not to exceed 3 percent of the award.

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

91 4. Any notice of cancellation or nonrenewal issued by an
92 insurer must comply with the notice requirements of s. 626.9201.
93 If the applicant receives a notice of cancellation or
94 nonrenewal, the applicant must immediately notify the
95 department.

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

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

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

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

115 3. An evaluation of the quality and value of the applicant
116 which supports the selection of the alternative securitization

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117 under paragraph (c). The department's evaluation must consider
118 the following information when determining the form for securing
119 the award amount:

120 a. A financial analysis of the company, including an
121 evaluation of the company's short-term liquidity ratio as
122 measured by its assets to liability, the company's profitability
123 ratio, and the company's long-term solvency as measured by its
124 debt-to-equity ratio;

125 b. The historical market performance of the company;

126 c. Any independent evaluations of the company;

127 d. The latest audit of the company's financial statement
128 and the related auditor's management letter; and

129 e. Any other types of reports that are related to the
130 internal controls or management of the company.

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

134 a. An irrevocable letter of credit issued by a financial
135 institution, as defined in s. 655.005;

136 b. Cash or securities held in trust by a financial
137 institution, as defined in s. 655.005, and subject to a control
138 agreement; or

139 c. A secured transaction in collateral under the control or
140 possession of the applicant for the value of the award amount.

141 The department is authorized to negotiate the terms and
142 conditions of the security agreement.

143 2. The contract or agreement must provide that the release
144 of any funds is contingent upon the receipt of documentation by
145 the department which satisfies all of the requirements found in

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146 this paragraph. Funds may not be paid to the applicant until the
147 department certifies compliance with this subsection.

148 3. The irrevocable letter of credit, trust, or security
149 agreement must remain in effect until all performance conditions
150 specified in the contract or agreement have been satisfied.
151 Failure to comply with this provision results in a violation of
152 the contract or agreement between the applicant and the
153 department and releases the department from any obligation to
154 make future scheduled payments.

155 (d) The department may waive the requirements of paragraphs
156 (a) through (c) by certifying to the Governor and the chair and
157 vice chair of the Legislative Budget Commission the following
158 information:

159 1. The applicant demonstrates the financial ability to
160 fulfill the requirements of the contract and has submitted an
161 independently audited financial statement for the previous 5
162 years;

163 2. If applicable, the applicant was previously a recipient
164 of an incentive under an economic development program, was
165 subject to clawback requirements, and timely complied with those
166 provisions; and

167 3. The department has determined that waiver of the
168 requirements of paragraphs (a) through (c) is in the best
169 interest of the state.

170 (e) For waivers granted under paragraph (d), the department
171 shall provide a written description and evaluation of the waiver
172 to the chair and vice chair of the Legislative Budget
173 Commission. Such information may be provided at the same time
174 that the information for the project consultation is provided to

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175 the Legislative Budget Commission under s. 288.1088 or s.
176 288.1089. If the chair or vice chair of the Legislative Budget
177 Commission timely advises the department that such action or
178 proposed action exceeds delegated authority or is contrary to
179 legislative policy or intent, the department shall void the
180 waiver until the Legislative Budget Commission or the
181 Legislature addresses the issue. Notwithstanding such
182 requirement, any project exceeding \$5 million must be approved
183 by the Legislative Budget Commission.

184 (f) The provisions of this subsection shall apply to any
185 contract entered into on or after July 1, 2013.

186 (4) In the event of default on the performance conditions
187 specified in the contract or agreement, or violation of any of
188 the provisions found in this section, the state may, in addition
189 to any other remedy provided by law, bring suit to enforce its
190 interest.

191 (5)~~(3)~~ The department shall validate contractor
192 performance. Such validation shall be reported in the annual
193 incentive report required under s. 288.907.

194 (6) The department is authorized to adopt rules to
195 implement this section.

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