

Council Substitute for House Bill No. 1541

An act relating to public records; amending s. 288.075, F.S.; expanding the definition of the term “economic development agency” to include, for purposes of confidentiality of records, the Florida Commercial Space Financing Corporation and any public economic development agency of a county or a municipality; extending the scheduled repeal of a public records exemption for information concerning business location, relocation, or expansion plans; providing for future expiration and legislative review; clarifying an exception to the confidentiality provided by such exemption; authorizing public officers or employees under specified conditions to enter into agreements with a business that has requested confidentiality; authorizing an extension in the period of confidentiality; increasing the period of confidentiality for trade secrets; providing a statement of public necessity; providing an effective date.

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) As used in this section, the term “economic development agency” means the Office of Tourism, Trade, and Economic Development, any industrial development authority created in accordance with part III of chapter 159 or by special law, the Spaceport Florida Authority created in part II of chapter 331, the Florida Commercial Space Financing Corporation created in part III of chapter 331, the public economic development agency of a county or municipality ~~that advises the county commission on the issuance of industrial revenue bonds of a county that does not have an industrial development authority created in accordance with part III of chapter 159 or by special law~~, or any research and development authority created in accordance with part V of chapter 159. The term also includes 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.

(2) Upon written request from a private corporation, partnership, or person, records of an economic development agency which contain or would provide information concerning plans, intentions, or interests of such private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 24 months after the date an economic development agency receives a request for confidentiality or until disclosed by an economic development agency pursuant to subsection (4) or by the party requesting confidentiality under this section. Confidentiality must be maintained until the expiration of the 24-month period or until documents or information are otherwise disclosed, whichever occurs first. Any This confidentiality provided under this section does not

apply when any party petitions a court of competent jurisdiction and, in the opinion of the court, proves need for access to such documents. This exemption expires October 2, ~~2006~~ 2001, and is subject to review by the Legislature under the Open Government Sunset Review Act of 1995 in accordance with s. 119.15.

(3) This section does not waive any provision of chapter 120 or any other provision of law requiring a public hearing.

(4) A public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information pursuant to this section, until 90 days after such information is made public, unless such public officer or employee is acting in an official capacity, the agreement does not accrue to the personal benefit of such public officer or employee, and, in the professional judgment of such officer or employee, the agreement is necessary to effectuate an economic development project.

(5) An economic development agency may extend the period of confidentiality specified in subsection (2) for up to an additional 12 months upon written request from the private corporation, partnership, or person who originally requested confidentiality under this section and upon a finding by the economic development agency that such private corporation, partnership, or person is still actively considering locating, relocating, or expanding its business activities in this state. Such a request for an extension in the period of confidentiality must be received prior to the expiration of any confidentiality originally provided under this section.

(6) Notwithstanding the period of confidentiality specified in subsection (2), trade secrets, as defined by s. 812.081, contained in the records of an economic development agency relating to the plans, intentions, or interests of a corporation, partnership, or person who has requested confidentiality pursuant to this section are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 10 years after the date an economic development agency receives a request for confidentiality or until otherwise disclosed, whichever occurs first. The 10-year period of confidentiality provided by this subsection does not apply to any portion of the records other than trade secrets as defined by s. 812.081.

~~(7)~~(5) Any person who is an employee of an economic development agency who violates the provisions of this section commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. The Legislature finds that it is a public necessity that the confidentiality provided by section 288.075, Florida Statutes, for information on a business's plans to locate, relocate, or expand its activities in this state be broadened to include records of a county or a municipal economic development agency which contain such information. Many counties and municipalities in this state operate public economic development offices that assist businesses that are considering locating, relocating, or expanding in this state. Confidentiality during the site selection process is extremely

important to businesses because, among other reasons, disclosure of information concerning the business's plans could provide competitors in the marketplace with insights into the business's strategies and finances, could cause employees of the business to leave the organization in the face of uncertainty over the business's future, or could cause the business to experience inflated real estate prices as a result of speculation by those hoping to sell property to the business. If county or municipal economic development agencies were unable to provide confidentiality for such information, businesses would be reluctant to consider such communities as potential sites for their job-creating and investment projects, thus depriving those communities of the potential economic benefits associated with such projects. The Legislature also finds that it is a public necessity that economic development agencies be authorized to extend the period of confidentiality because a business's site selection process could take longer than the 24-month period currently provided by the public records exemption, and the disclosure of information while the business is still considering its site selection options could jeopardize a viable economic development project, as well as injure the business in the marketplace. In addition, the Legislature finds that trade secrets, as defined by section 812.081, Florida Statutes, which are obtained by an economic development agency during the site selection process merit a longer period of confidentiality because the injury that would occur to a business in the marketplace if its competitors obtained such trade secrets is greater than the injury that would occur from disclosure of other information concerning a business's plans to locate, relocate, or expand its activities in this state. The harm that would result from the release of sensitive business information or from the impairment of the effective administration of the state and local economic development efforts far outweighs the public benefit derived from release of such information. Furthermore, disclosure of financing records during negotiations between private and public entities would discourage economic development in general, and have a negative impact on increasing the number of high-technology, high-paying jobs in the state.

Section 3. This act shall take effect October 1, 2001.

Approved by the Governor June 5, 2001.

Filed in Office Secretary of State June 5, 2001.