

Committee Substitute for House Bill No. 777

An act relating to public records; creating s. 288.1067, F.S.; creating a public-records exemption for specified business information received under the capital-investment tax-credit program, qualified-defense-contractor tax-refund program, qualified target industry tax-refund program, high impact sector performance program, and quick-action closing fund program; specifying that the exemption does not preclude publication of aggregate data or release of names of qualifying businesses and refund amounts; amending s. 213.053, F.S.; adding an exception to the exemption; amending s. 443.1715, F.S.; adding an exception to the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 288.1067, Florida Statutes, is created to read:

288.1067 Confidentiality of records.—

(1) The following information held by the Office of Tourism, Trade, and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities, and their employees or agents, pursuant to the incentive programs for qualified businesses as provided in s. 220.191, s. 288.1045, s. 288.106, s. 288.108, or s. 288.1088 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, for a period not to exceed the duration of the relevant tax refund, tax credit, or incentive agreement:

(a) The business's federal employer identification number, unemployment compensation account number, and Florida sales tax registration number.

(b) Any trade secret information as defined in s. 812.081. Notwithstanding any provision of this section, trade secret information shall continue to be confidential and exempt after the duration of the tax refund, tax credit, or incentive agreement.

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

(d) The anticipated wages for the project jobs that the business plans to create, as reported on the application for certification.

(e) The average wage actually paid by the business for those jobs created by the project and any detailed proprietary business information or an employee's personal identifying information, held as evidence of the achievement or nonachievement of the wage requirements of the tax refund, tax

credit, or incentive agreement programs or of the job-creation requirements of such programs.

(f) Any proprietary business information regarding capital investment in eligible building and equipment made by the qualified business project when held by the Office of Tourism, Trade, and Economic Development as evidence of the achievement or nonachievement of the investment requirements for the tax-credit certification under s. 220.191, for the high-impact performance agreement under s. 288.108, or for the quick-action closing fund agreement under s. 288.1088.

(g) The amount of:

1. Taxes on sales, use, and other transactions paid pursuant to chapter 212;

2. Corporate income taxes paid pursuant to chapter 220;

3. Intangible personal property taxes paid pursuant to chapter 199;

4. Emergency excise taxes paid pursuant to chapter 221;

5. Insurance premium taxes paid pursuant to chapter 624;

6. Excise taxes paid on documents pursuant to chapter 201; or

7. Ad valorem taxes paid, as defined in s. 220.03(1),

which the qualified business reports on its application for certification or reports during the term of the tax refund agreement, and for which the qualified business claims a tax refund under s. 288.1045 or s. 288.106, and any such information held as evidence of the achievement or nonachievement of performance items contained in the tax refund agreement.

(2) Nothing contained in this section shall prevent the Office of Tourism, Trade, and Economic Development or Enterprise Florida, Inc., from releasing:

(a) The names of qualified businesses, the total number of jobs each business expects to create, the total number of jobs created by each business, and the amount of tax refunds awarded to and claimed by each business under s. 228.1045 or s. 288.106. However, for a business applying under s. 288.1045 based on obtaining a new Department of Defense contract, the total number of jobs expected and the amount of tax refunds claimed shall not be released until the new Department of Defense contract is awarded;

(b) The amount of incentives awarded and claimed by each business under s. 288.108 or s. 288.1088; or

(c) The names of qualified businesses, the total number of jobs each business expects to create, and the total number of jobs created by each business under s. 220.191.

(3) Nothing contained in this section shall prevent the Office of Tourism, Trade and Economic Development or Enterprise Florida, Inc., from publishing statistics in the aggregate and so classified as to prevent the identification of a single qualified applicant.

(4) This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Paragraph (k) of subsection (7) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

(7) Notwithstanding any other provision of this section, the department may provide:

(k)1. Payment information relative to chapters 199, 201, 212, 220, and 221, and 624 to the Office of Tourism, Trade, and Economic Development, or its employees or agents that are identified in writing by the office to the department, in the its administration of the tax refund program for qualified defense contractors authorized by s. 288.1045 and the tax refund program for qualified target industry businesses authorized by s. 288.106.

2. Information relative to tax credits taken by a business under s. 220.191 and exemptions or tax refunds received by a business under s. 212.08(5)(j) to the Office of Tourism, Trade, and Economic Development, or its employees or agents that are identified in writing by the office to the department, in the administration and evaluation of the capital investment tax credit program authorized in s. 220.191 and the semiconductor, defense, and space tax exemption program authorized in s. 212.08(5)(j).

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 3. Subsection (1) of section 443.1715, Florida Statutes, is amended to read:

443.1715 Disclosure of information; confidentiality.—

(1) RECORDS AND REPORTS.—Information revealing the employing unit's or individual's identity obtained from the employing unit or from any individual pursuant to the administration of this chapter, and any determination revealing such information, ~~must~~, except to the extent necessary for the proper presentation of a claim or upon written authorization of the claimant who has a workers' compensation claim pending, must be held confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information may be made available only

to public employees in the performance of their public duties, including employees of the Department of Education in obtaining information for the Florida Education and Training Placement Information Program and the Office of Tourism, Trade, and Economic Development in its administration of the qualified defense contractor tax refund program authorized by s. 288.1045 and the qualified target industry tax refund program authorized by s. 288.106. Except as otherwise provided by law, public employees receiving such information must retain the confidentiality of such information. Any claimant, or the claimant's legal representative, at a hearing before an appeals referee or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of her or his claim. Any employee or member of the commission or any employee of the division, or any other person receiving confidential information, who violates any provision of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, the division may furnish to any employer copies of any report previously submitted by such employer, upon the request of such employer, and may furnish to any claimant copies of any report previously submitted by such claimant, upon the request of such claimant, and the division is authorized to charge therefor such reasonable fee as the division may by rule prescribe not to exceed the actual reasonable cost of the preparation of such copies. Fees received by the division for copies as provided in this subsection must be deposited to the credit of the Employment Security Administration Trust Fund.

Section 4. The Legislature finds that it is a public necessity to provide confidentiality for certain information concerning businesses that is obtained through the administration of the tax refund, tax credit, and incentive programs for qualified defense contractors, qualified target-industry businesses, high-impact performance incentive businesses, quick-action closing fund businesses, and capital-investment tax-credit businesses under sections 220.191, 288.1045, 288.106, 288.108, and 288.1088, Florida Statutes. The disclosure of information such as trade secrets, tax identification numbers, analyses of gross receipts, the amount of taxes paid, the amount of capital investment, and the amount of employee wages paid, and the detailed documentation to substantiate such performance information, could injure a business in the marketplace by providing its competitors with detailed insights into the financial status and the strategic plans of the business, thereby diminishing the advantage that the business maintains over those who do not possess such information. The disclosure, prior to the award of a new Department of Defense contract, of information such as the number of new jobs to be created to perform the contract and the amount of refunds claimed could injure a business by providing competitors with detailed insights into the resources of the business and diminish the business's chances of obtaining a new Department of Defense contract. Some of the documentation supplied to support a business's tax refund and credit claims, or other incentive claims, could reveal private information, such as employee names and social security numbers, concerning that business's employees. Without this exemption, private-sector businesses, whose records generally are not required to be open to the public, might refrain from participating in these economic-development programs and thus would not be able to use the tax refunds available under the programs. If a business

were unable to use the tax refund, it might choose to locate its employment and other investment activities outside the state, depriving the state and the public of the potential economic benefits associated with such business activities in Florida. The harm to businesses in the marketplace and to the effective administration of these economic-development programs caused by the public disclosure of such information far outweighs the public benefits derived from its release. In addition, because the confidentiality provided by this act does not preclude the reporting of statistics in the aggregate concerning the programs, as well as the names of businesses participating in the programs and the amount of tax refunds and other incentives awarded and claimed, the public has access to information important to an assessment of the performance of those programs.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor April 22, 2002.

Filed in Office Secretary of State April 22, 2002.