

House Bill No. 7201

An act relating to public records exemptions for economic development agencies; amending s. 288.075, F.S., which provides an exemption from public records requirements for information related to business activities and trade secrets held by an economic development agency; defining the terms “proprietary confidential business information” and “trade secret”; reorganizing the exemption; extending the period of confidentiality for trade secrets; providing a specific exemption for proprietary confidential business information; providing for expiration of the exemption; providing a specific exemption for federal employer identification numbers, unemployment compensation account numbers, and Florida sales tax registration numbers held by an economic development agency; providing a specific exemption for specified information held by an economic development agency pursuant to the administration of an economic incentive program for qualified businesses; providing for limited duration of the exemption; providing penalties; providing for future legislative review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity; repealing s. 288.1067, F.S., relating to the confidentiality of records held by the Office of Tourism, Trade, and Economic Development, Enterprise Florida, Inc., or county or municipal governmental entities pursuant to specified incentive programs; 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) DEFINITIONS.—As used in this section, the term:

(a) “Economic development agency” means:

1.(a) The Office of Tourism, Trade, and Economic Development;

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

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

4.(d) 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.(e) Any research and development authority created in accordance with part V of chapter 159; or

6.(f) 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 disclosure of the information would cause harm to the business operations of the corporation, partnership, or person; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:

1. Business plans.
2. Internal auditing controls and reports of internal auditors.
3. Reports of external auditors for privately held companies.

(c) “Trade secret” has the same meaning as in s. 688.002.

(2) PLANS, INTENTIONS, AND INTERESTS.—

(a) Upon written request from a private corporation, partnership, or person, information held by an economic development agency 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 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first.

(b)(3) An economic development agency may extend the period of confidentiality specified in ~~paragraph (a) 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.

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

1. The public officer or employee is acting in an official capacity;
2. The agreement does not accrue to the personal benefit of such public officer or employee; and

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

~~(3)(4) TRADE SECRETS.—Trade secrets held by, 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.~~

(4) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—Proprietary confidential business information held by an economic development agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information.

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

(6) ECONOMIC INCENTIVE PROGRAMS.—

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

1. 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.

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

3. The average wage actually paid by the business for those jobs created by the project or an employee's personal identifying information which is 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.

4. The amount of:

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

- b. Corporate income taxes paid pursuant to chapter 220;
 - c. Intangible personal property taxes paid pursuant to chapter 199;
 - d. Emergency excise taxes paid pursuant to chapter 221;
 - e. Insurance premium taxes paid pursuant to chapter 624;
 - f. Excise taxes paid on documents pursuant to chapter 201;
 - g. Ad valorem taxes paid, as defined in s. 220.03(1); or
 - h. State communications services taxes paid pursuant to chapter 202.
- (b)1. An economic development agency may release:
- a. Names of qualified businesses.
 - b. The total number of jobs each business expects to create.
 - c. The total number of jobs created by each business.
 - d. The amount of tax refunds, tax credits, or incentives awarded to and claimed by each business.

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

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

~~(5) 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 the information is made public unless:~~

- ~~(a) The public officer or employee is acting in an official capacity;~~
- ~~(b) The agreement does not accrue to the personal benefit of such public officer or employee; and~~
- ~~(c) In the professional judgment of the officer or employee, the agreement is necessary to effectuate an economic development project.~~

~~(7)(6) PENALTIES.—Any person who is an employee of an economic development agency who violates the provisions of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

(8) LEGISLATIVE REVIEW OF EXEMPTIONS.—This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15

and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to provide confidentiality for certain information concerning businesses participating in a state incentive program held by an economic development agency. The disclosure of information such as trade secrets, proprietary confidential business information, or other business information could injure a business in the marketplace by providing its competitors with detailed insights into the strategic plans of the business or with confidential personnel information, thereby diminishing the advantage that the business maintains over those that do not possess such information. Without these exemptions, private-sector businesses, whose records generally are not required to be open to the public, might refrain from participating in economic development programs or tax credit or tax refund programs and thus would not be able to use the incentives available under the programs. If a business were unable to use the incentives, the business might choose to locate its business and other investment activities outside the state, which would deprive the state and the public of the potential economic benefits associated with such business activities in this state. The harm to businesses in the marketplace and to the effective administration of economic development and incentive programs caused by the public disclosure of such information far outweighs the public benefits derived from the release of the information.

Section 3. Section 288.1067, Florida Statutes, is repealed.

Section 4. This act shall take effect July 1, 2007.

Approved by the Governor June 19, 2007.

Filed in Office Secretary of State June 19, 2007.