

## CHAPTER 2012-28

### Committee Substitute for House Bill No. 7115

An act relating to a review under the Open Government Sunset Review Act; amending s. 288.075, F.S., which provides public record exemptions for information held by economic development agencies; saving from repeal the exemption concerning plans, intentions, or interests of a private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state; providing that the exemption applies if a request for confidentiality is made before an economic incentive agreement is signed; specifying the time period during which information remains confidential and exempt when a final project order for a signed economic development agreement is issued; saving from repeal the exemption for trade secrets; saving from repeal the exemption for proprietary confidential business information; saving from repeal the exemption for identification, account, and registration numbers and sales, wage, and tax data relating to a recipient of an economic development incentive; saving from repeal the exemption for information held pursuant to the administration of an economic incentive program; clarifying and reorganizing the exemption; providing that the taxes paid by businesses participating in an economic incentive program may be disclosed in the aggregate; specifying duration of the period in which certain information held by an economic development agency relating to a specific business participating in an economic development program remains confidential and exempt; removing the scheduled repeal of the exemptions; 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. The Department of Economic Opportunity;
2. Any industrial development authority created in accordance with part III of chapter 159 or by special law;
3. Space Florida created in part II of chapter 331;
4. 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. Any research and development authority created in accordance with part V of chapter 159; or

6. 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)1. ~~If Upon written request from~~ a private corporation, partnership, or person requests in writing before an economic incentive agreement is signed that, information held by an economic development agency maintain the confidentiality of 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, the information 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.

~~2.(b)~~ An economic development agency may extend the period of confidentiality specified in subparagraph 1, paragraph (a) 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 subparagraph 1, this section.

If a final project order for a signed economic development agreement is issued, then the information will remain confidential and exempt for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first. However, such period of confidentiality may not extend beyond the period of confidentiality established in subparagraph 1. or subparagraph 2.

(b)(e) 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) TRADE SECRETS.—Trade secrets held by an economic development agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(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.~~

~~2.3. The average wage actually paid by the business for those jobs created by the project or An individual employee's personal identifying information that 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.~~

~~3.4. 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. Insurance premium taxes paid pursuant to chapter 624;
- e. Excise taxes paid on documents pursuant to chapter 201;
- f. Ad valorem taxes paid, as defined in s. 220.03(1); or
- g. State communications services taxes paid pursuant to chapter 202.

However, an economic development agency may disclose in the annual incentives report required under s. 288.907 the aggregate amount of each tax identified in this subparagraph and paid by all businesses participating in each economic incentive program.

(b)1. The following information held by an economic development agency relating to a specific business participating in an economic incentive program is no longer confidential or exempt 180 days after a final project order for an economic incentive agreement is issued, until a date specified in the final project order, or if the information is otherwise disclosed, whichever occurs first may release:

- a. The name Names of the qualified business businesses.
- b. The total number of jobs the each business committed expects to create or retain.
- c. The total number of jobs created or retained by the each business.
- d. Notwithstanding s. 213.053(2), the amount of tax refunds, tax credits, or incentives awarded to, and claimed by, or, if applicable, refunded to the state by the each business.

e. The anticipated total annual wages of employees the business committed to hire or retain.

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.

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

(7) 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. This act shall take effect upon becoming a law.

Approved by the Governor March 23, 2012.

Filed in Office Secretary of State March 23, 2012.