

1                                   A bill to be entitled  
 2           An act relating to public records exemptions for economic  
 3           development agencies; amending s. 288.075, F.S.; defining  
 4           the terms "proprietary confidential business information"  
 5           and "trade secret"; extending the period of  
 6           confidentiality for trade secrets; extending the period of  
 7           confidentiality for a business's federal employment  
 8           identification number, unemployment compensation account  
 9           number, and Florida sales tax registration number;  
 10          providing for the confidentiality of information that  
 11          would identify wages, taxes, and other employment  
 12          information; providing for future legislative review and  
 13          repeal under the Open Government Sunset Review Act;  
 14          providing a statement of public necessity; repealing s.  
 15          288.1067, F.S., relating to the confidentiality of records  
 16          held by the Office of Tourism, Trade, and Economic  
 17          Development, Enterprise Florida, Inc., or county or  
 18          municipal governmental entities, and their employees or  
 19          agents; providing an effective date.

20  
 21   Be It Enacted by the Legislature of the State of Florida:  
 22          Section 1.   Section 288.075, Florida Statutes, is amended to  
 23   read:  
 24          288.075   Confidentiality of records.--  
 25          (1)   DEFINITIONS.--As used in this section, the term:  
 26          (a)   "Economic development agency" means:  
 27          1.(a)   The Office of Tourism, Trade, and Economic  
 28   Development;  
 29          2.(b)   Any industrial development authority created in

30 accordance with part III of chapter 159 or by special law;  
 31 ~~3.(e)~~ Space Florida created in part II of chapter 331;  
 32 ~~4.(d)~~ The public economic development agency of a county or  
 33 municipality;

34 ~~5.(e)~~ Any research and development authority created in  
 35 accordance with part V of chapter 159; or

36 ~~6.(f)~~ Any private agency, person, partnership, corporation,  
 37 or business entity when authorized by the state, a municipality,  
 38 or a county to promote the general business interests or  
 39 industrial interests of the state or that municipality or county.

40 (b) "Proprietary confidential business information" means  
 41 information that is owned or controlled by the corporation,  
 42 partnership, or person requesting confidentiality under this  
 43 section; that is intended to be and is treated by the  
 44 corporation, partnership, or person as private in that the  
 45 disclosure of the information would cause harm to the business  
 46 operations of the corporation, partnership, or person; that has  
 47 not been disclosed unless disclosed pursuant to a statutory  
 48 provision, an order of a court or administrative body, or a  
 49 private agreement providing that the information may be released  
 50 to the public; and that is information concerning:

- 51 1. Business plans.
- 52 2. Internal auditing controls and reports of internal  
 53 auditors.
- 54 3. Reports of external auditors for privately held  
 55 companies.

56 (c) "Trade secret" has the same meaning as in s. 688.002.

57 (2) PLANS, INTENTIONS, AND INTERESTS.--

58 (a) Upon written request from a private corporation,

59 | partnership, or person, information held by an economic  
 60 | development agency concerning plans, intentions, or interests of  
 61 | such private corporation, partnership, or person to locate,  
 62 | relocate, or expand any of its business activities in this state  
 63 | is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 64 | of the State Constitution for 12 months after the date an  
 65 | economic development agency receives a request for  
 66 | confidentiality or until the information is otherwise disclosed,  
 67 | whichever occurs first.

68 |       ~~(b)(3)~~ An economic development agency may extend the period  
 69 | of confidentiality specified in paragraph (a) ~~subsection (2)~~ for  
 70 | up to an additional 12 months upon written request from the  
 71 | private corporation, partnership, or person who originally  
 72 | requested confidentiality under this section and upon a finding  
 73 | by the economic development agency that such private corporation,  
 74 | partnership, or person is still actively considering locating,  
 75 | relocating, or expanding its business activities in this state.  
 76 | Such a request for an extension in the period of confidentiality  
 77 | must be received prior to the expiration of any confidentiality  
 78 | originally provided under this section.

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

84 |           1. The public officer or employee is acting in an official  
 85 | capacity;

86 |           2. The agreement does not accrue to the personal benefit of  
 87 | such public officer or employee; and

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

91 ~~(3)(4) TRADE SECRETS.--Trade secrets held by, as defined by~~  
 92 ~~s. 812.081, contained in the records of an economic development~~  
 93 ~~agency relating to the plans, intentions, or interests of a~~  
 94 ~~corporation, partnership, or person who has requested~~  
 95 ~~confidentiality pursuant to this section are confidential and~~  
 96 ~~exempt from s. 119.07(1) and s. 24(a), Art. I of the State~~  
 97 ~~Constitution for 10 years after the date an economic development~~  
 98 ~~agency receives a request for confidentiality or until otherwise~~  
 99 ~~disclosed, whichever occurs first.~~

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

107 (5) IDENTIFICATION, ACCOUNT, AND REGISTRATION NUMBERS.--A  
 108 federal employer identification number, unemployment compensation  
 109 account number, or Florida sales tax registration number held by  
 110 an economic development agency is confidential and exempt from s.  
 111 119.07(1) and s. 24(a), Art. I of the State Constitution.

112 (6) ECONOMIC INCENTIVE PROGRAMS.--  
 113 (a) The following information held by an economic  
 114 development agency pursuant to the administration of an economic  
 115 incentive program for qualified businesses is confidential and  
 116 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

117 Constitution, for a period not to exceed the duration of the  
 118 incentive agreement, including an agreement authorizing a tax  
 119 refund or tax credit, or upon termination of the incentive  
 120 agreement:

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

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

129 3. The average wage actually paid by the business for those  
 130 jobs created by the project or an employee's personal identifying  
 131 information which is held as evidence of the achievement or  
 132 nonachievement of the wage requirements of the tax refund, tax  
 133 credit, or incentive agreement programs or of the job-creation  
 134 requirements of such programs.

135 4. The amount of:

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

138 b. Corporate income taxes paid pursuant to chapter 220;

139 c. Intangible personal property taxes paid pursuant to  
 140 chapter 199;

141 d. Emergency excise taxes paid pursuant to chapter 221;

142 e. Insurance premium taxes paid pursuant to chapter 624;

143 f. Excise taxes paid on documents pursuant to chapter 201;

144 or

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

146        (b)1. An economic development agency may release:  
 147        a. Names of qualified businesses.  
 148        b. The total number of jobs each business expects to  
 149 create.  
 150        c. The total number of jobs created by each business.  
 151        d. The amount of tax refunds, tax credits, or incentives  
 152 awarded to and claimed by each business.  
 153        2. For a business applying for certification under s.  
 154 288.1045 which is based on obtaining a new Department of Defense  
 155 contract, the total number of jobs expected and the amount of tax  
 156 refunds claimed may not be released until the new Department of  
 157 Defense contract is awarded.  
 158        (c) An economic development agency may publish statistics  
 159 in the aggregate and classified so as to prevent the  
 160 identification of a single qualified applicant.  
 161        ~~(5) A public officer or employee may not enter into a~~  
 162 ~~binding agreement with any corporation, partnership, or person~~  
 163 ~~who has requested confidentiality of information pursuant to this~~  
 164 ~~section until 90 days after the information is made public~~  
 165 ~~unless:~~  
 166        ~~(a) The public officer or employee is acting in an official~~  
 167 ~~capacity;~~  
 168        ~~(b) The agreement does not accrue to the personal benefit~~  
 169 ~~of such public officer or employee; and~~  
 170        ~~(c) In the professional judgment of the officer or~~  
 171 ~~employee, the agreement is necessary to effectuate an economic~~  
 172 ~~development project.~~  
 173        (7)-(6) PENALTIES.--Any person who is an employee of an  
 174 economic development agency who violates the provisions of this

175 | section commits a misdemeanor of the second degree, punishable as  
 176 | provided in s. 775.082 or s. 775.083.

177 | (8) OPEN GOVERNMENT SUNSET REVIEW ACT.--This section is  
 178 | subject to the Open Government Sunset Review Act in accordance  
 179 | with s. 119.15 and shall stand repealed on October 2, 2012,  
 180 | unless reviewed and saved from repeal through reenactment by the  
 181 | Legislature.

182 | Section 2. The Legislature finds that it is a public  
 183 | necessity to provide confidentiality for certain information  
 184 | concerning businesses or of a business participating in a state  
 185 | incentive program held by an economic development agency. The  
 186 | disclosure of information such as trade secrets, proprietary  
 187 | confidential business information, or other business information  
 188 | could injure a business in the marketplace by providing its  
 189 | competitors with detailed insights into the strategic plans of  
 190 | the business or with confidential personnel information, thereby  
 191 | diminishing the advantage that the business maintains over those  
 192 | that do not possess such information. Without these exemptions,  
 193 | private-sector businesses, whose records generally are not  
 194 | required to be open to the public, might refrain from  
 195 | participating in economic-development programs or tax-credit or  
 196 | tax-refund programs and thus would not be able to use the  
 197 | incentives available under the programs. If a business were  
 198 | unable to use the incentives, the business might choose to locate  
 199 | its business and other investment activities outside the state,  
 200 | which would deprive the state and the public of the potential  
 201 | economic benefits associated with such business activities in  
 202 | this state. The harm to businesses in the marketplace and to the  
 203 | effective administration of economic-development and incentive

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204 | programs caused by the public disclosure of such information far  
205 | outweighs the public benefits derived from the release of the  
206 | information.

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

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