



Government Operations Subcommittee

**Wednesday, December 07, 2011
1:00 PM
306 HOB**

Meeting Packet

**Dean Cannon
Speaker**

**Jimmy Patronis
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Wednesday, December 07, 2011 01:00 pm
End Date and Time: Wednesday, December 07, 2011 03:30 pm
Location: 306 HOB
Duration: 2.50 hrs

Consideration of the following bill(s):

HB 539 Pub. Rec./Florida Historic Capitol and Legislative Research Center and Museum by Frishe
HB 4091 Governor's Private Secretary by Burgin
HB 4103 Certification of Minority Business Enterprises by Burgin

Consideration of the following proposed committee bill(s):

PCB GVOPS 12-01 -- OGSR U.S. Census Bureau Address Information
PCB GVOPS 12-02 -- OGSR Donor Information/Publicly Owned House Museums
PCB GVOPS 12-03 -- OGSR Donor Information/Historic Preservation of the City of St. Augustine
PCB GVOPS 12-04 -- OGSR Insurance Claim Data Exchange Information

Workshop section 288.075, Florida Statutes, which provides a public record exemption for economic development agencies

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 539 Pub. Rec./Florida Historic Capitol and Legislative Research Center and Museum
SPONSOR(S): Frishe
TIED BILLS: IDEN./SIM. BILLS: SB 374

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Williamson <i>Williamson</i>	Williamson <i>Williamson</i>
2) Rules & Calendar Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law provides several public record exemptions for the identity of a donor or prospective donor to an organization who wishes to remain anonymous. Examples include the Cultural Endowment Program, the direct support organization for the Florida Agricultural Museum, and the direct support organization for the John and Mable Ringling Museum of Art.

The bill creates a public record exemption for information that would identify a donor or prospective donor to the direct-support organization for the Florida Historic Capitol and the Legislative Research Center and Museum who desires to remain anonymous. It provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Public Record Exemptions, Donor Information

Current law provides several public record exemptions for the identity of a donor or prospective donor to an organization who wishes to remain anonymous. Examples include the Cultural Endowment Program,³ the direct support organization for the Florida Agricultural Museum,⁴ and the direct support organization for the John and Mable Ringling Museum of Art.⁵

Direct-Support Organization, Legislative Research Center and Museum

In 2009, the Legislature authorized the Legislative Research Center and Museum, at the Historic Capitol, and the Capitol Curator⁶ to establish a direct-support organization (DSO) in order to provide assistance and promotional support through fundraising for the Florida Historic Capitol and the Legislative Research Center and Museum.⁷ The DSO must be a not for profit, Florida corporation that is incorporated under chapter 617, F.S.,⁸ and approved by the Department of State.⁹

¹ Section 24(c), Art. I of the State Constitution.

² Section 119.15, F.S.

³ Section 265.605(2), F.S.

⁴ Section 570.903(6), F.S.

⁵ Section 1004.45(2)(h), F.S.

⁶ The Florida Historic Capitol Curator is appointed by and serves at the pleasure of the President of the Senate and the Speaker of the House of Representatives. The curator is responsible for: promoting and encouraging state knowledge and appreciation of the Florida Historic Capitol; collecting, researching, exhibiting, interpreting, preserving and protecting the history, artifacts, objects, furnishings and other materials related to the Florida Historic Capitol, other than archaeological materials; and developing, directing, supervising, and maintaining the interior design and furnishings within the Florida Historic Capitol. In conjunction with the Legislative Research Center and Museum at the Historic Capitol, the curator also may assist the Florida Historic Capitol in the performance of certain monetary duties. See s. 272.135, F.S.

⁷ Section 3, chapter 2009-179, L.O.F.; codified as s. 272.136, F.S.

⁸ Chapter 617, F.S., relates to not for profit corporations.

⁹ Section 272.136(2), F.S.

The DSO is governed by a nine-member board of directors who must have a demonstrated capacity for supporting the mission of the Historic Capitol. Initial appointments to the board are made by the President of the Senate and the Speaker of the House of Representatives and, thereafter, by the board.¹⁰

If the DSO is no longer authorized or fails to comply with the statutory requirements, fails to maintain its tax-exempt status, or ceases to exist, then all funds obtained through grants, gifts, and donations in the DSO's account revert to the state and are deposited into an account designated by the Legislature.¹¹

The DSO received its not-for-profit designation in October 2010, and has been receiving contributions.

Effect of Bill

The bill creates a public record exemption for the identity of a donor or prospective donor to the direct-support organization for the Florida Historic Capitol and the Legislative Research Center and Museum who desires to remain anonymous. The personal identifying information is confidential and exempt¹² from public records requirements. The anonymity of a donor or prospective donor must be maintained in the auditor's report for annual financial audits.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹³

B. SECTION DIRECTORY:

Section 1 amends s. 272.136, F.S., to create a public record exemption for the direct-support organization for the Florida Historic Capitol and the Legislative Research Center and Museum

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹⁰ Section 272.136(1), F.S.

¹¹ Section 272.136(6), F.S.

¹² There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹³ Section 24(c), Art. I of the State Constitution.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a public record exemption for the "identity of a donor or prospective donor" to the direct-support organization (DSO) and for "all information identifying such donor or prospective donor" to the DSO. The language appears redundant. In order to avoid redundancy, the sponsor may want to consider an amendment to revise the language as follows:

Any information identifying a donor or prospective donor to the direct-support organization who desires to remain anonymous is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 272.136, F.S.; exempting from public record
 4 requirements all identifying information of a donor or
 5 prospective donor to the direct-support organization
 6 of the Florida Historic Capitol and the Legislative
 7 Research Center and Museum; providing for future
 8 repeal and legislative review of the exemption under
 9 the Open Government Sunset Review Act; providing a
 10 statement of public necessity; providing an effective
 11 date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (7) is added to section 272.136,
 16 Florida Statutes, to read:

17 272.136 Direct-support organization.—The Legislative
 18 Research Center and Museum at the Historic Capitol and the
 19 Capitol Curator may establish a direct-support organization to
 20 provide assistance and promotional support through fundraising
 21 for the Florida Historic Capitol and the Legislative Research
 22 Center and Museum, including, but not limited to, their
 23 educational programs and initiatives.

24 (7) (a) The identity of a donor or prospective donor to the
 25 direct-support organization who desires to remain anonymous and
 26 all information identifying such donor or prospective donor is
 27 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 28 of the State Constitution. Such anonymity shall be maintained in

29 any auditor's report created pursuant to the annual financial
 30 audit required under subsection (5).

31 (b) This subsection is subject to the Open Government
 32 Sunset Review Act in accordance with s. 119.15 and shall stand
 33 repealed on October 2, 2017, unless reviewed and saved from
 34 repeal through reenactment by the Legislature.

35 Section 2. The Legislature finds that it is a public
 36 necessity that information identifying a donor or prospective
 37 donor to the direct-support organization for the Florida
 38 Historic Capitol and the Legislative Research Center and Museum
 39 be made confidential and exempt from public records requirements
 40 if such donor or prospective donor desires to remain anonymous.
 41 In order to encourage private support for the direct-support
 42 organization, it is a public necessity to promote the giving of
 43 gifts to, and the raising of private funds for, the acquisition,
 44 renovation, rehabilitation, and the programming and preservation
 45 of the Florida Historic Capitol and the Legislative Research
 46 Center and Museum. An essential element of an effective plan for
 47 promoting the giving of private gifts and the raising of private
 48 funds is the need to protect the identity of prospective and
 49 actual donors who desire to remain anonymous. If the identity of
 50 prospective and actual donors who desire to remain anonymous is
 51 subject to disclosure, there is a chilling effect on donations
 52 because donors are concerned about disclosure of personal
 53 information leading to theft and, in particular, identity theft,
 54 including personal safety and security. Therefore, the
 55 Legislature finds that it is a public necessity to make
 56 confidential and exempt from public records requirements

HB 539

2012

57 | information that would identify a donor or prospective donor to
58 | the direct-support organization for the Florida Historic Capitol
59 | and the Legislative Research Center and Museum if such donor or
60 | prospective donor wishes to remain anonymous.

61 | Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4091 Governor's Private Secretary
SPONSOR(S): Burgin
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Thompson <i>JH</i>	Williamson <i>RAW</i>
2) State Affairs Committee			

SUMMARY ANALYSIS

Current law allows the Governor to appoint and commission a person to hold the office of private secretary for the Governor. However, staff of the Executive Office of the Governor are under the state personnel system with state-approved titles. Administrative services personnel staff of the Executive Office of the Governor and state personnel system staff of the Department of Management Services are not aware of when this provision might have been used.

As such, the bill repeals this archaic provision which was enacted in 1845.

The bill has no fiscal impact.

The bill takes effect July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Enacted in 1845, s. 14.03, F.S., allows the Governor to appoint and commission a person to hold the office of private secretary for the Governor. This person is to serve at the pleasure of the Governor in that capacity and as "clerk for the executive department." The person is to work daily at the capitol during office hours and is to perform other duties as directed by the Governor. In order to qualify for the position, the person "must be fit and proper to hold office."

In 1995, the law was amended, as part of a larger bill, to remove gender bias references in the Florida Statutes.¹

Present Situation

The staff of the Executive Office of the Governor are under the state personnel system with state-approved titles. The Executive Office of the Governor is under what is known as Pay Plans 07, 08, 09, and 15.² Employees of the Executive Office of the Governor are exempt from the career service system and serve at the pleasure of the Governor. According to the Executive Office of the Governor, currently one staff person who is in a senior management position provides services as private secretary to the Governor. The use of two staff had been the practice for the past three Governors, one staff in a select exempt service position and the other in a senior management service position.³

Administrative services, personnel staff of the Executive Office of the Governor, and state personnel system staff of the Department of Management Services were not aware of when the provisions of s. 14.03, F.S., relating to the private secretary of the Governor, might have been used.⁴

Effect of Proposed Changes

The bill removes this archaic provision of law. It is not used in the state personnel system governing the Executive Office of the Governor. The repeal also removes references to positions and departments that are not recognized or known in those terms today.⁵

B. SECTION DIRECTORY:

Section 1 repeals s. 14.03, F.S., relating to the Governor's appointment and commission of a person to be his or her private secretary and to serve as clerk for the executive department.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹ See s. 35, Chapter 95-147, L.O.F.

² Information received from Mr. Phil Spooner, Workforce Design and Compensation Manager, Division of Human Resource Management, Department of Management Services, on November 8, 2011. Pay plan 15 is a hybrid Senior Management Service pay plan with only two persons in that plan.

³ House bill analysis for HB 7035 (2011) by the State Affairs Committee, March 21, 2011, at 2.

⁴ Information received from Mr. Phil Spooner and Ms. Diane Moulten on November 8, 2011. In further discussion with Mr. Spooner, he was not aware of the last time the provision in law had been used; but, that in the 31 years he had been involved in the state personnel system the provision had never been used.

⁵ The statute refers to the private secretary serving as "clerk for the executive department."

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

HB 4091

2012

1 A bill to be entitled
2 An act relating to the Governor's private secretary;
3 repealing s. 14.03, F.S., relating to the Governor's
4 authority to appoint and commission a private
5 secretary; providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Section 14.03, Florida Statutes, is repealed.

10 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4103 Certification of Minority Business Enterprises

SPONSOR(S): Burgin

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Meadows <i>CM</i>	Williamson <i>WAW</i>
2) State Affairs Committee			

SUMMARY ANALYSIS

The bill deletes provisions that provide for the establishment and responsibilities of the Minority Business Certification Task Force (Task Force). The Task Force is a statutorily created advisory group attached to the Office of Supplier of Diversity within the Department of Management Services (DMS). The Task Force has fulfilled its statutory responsibility to propose uniform minority business certification criteria. DMS placed the criteria in the Florida Administrative Code over 14 years ago. According to the Office of Supplier Diversity, the Task Force has not met in recent years, because use of reciprocal agreements (agreements to accept a business's certified minority enterprise status issued by other entities) ended in 2006.

Abolishing the Task Force was recommended by the Office of Program Policy Analysis & Government Accountability as part of its sunset review of DMS.

The statutory authority of the Florida Advisory Council on Small and Minority Business Development permits this group to assist the Office of Supplier Diversity regarding reciprocal agreements. The Council has already provided input and guidance on these issues to the Office of Supplier Diversity.

There is no fiscal impact associated with the abolishment of the non-operational Minority Business Certification Task Force.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

During the 2010 Regular Session, the Department of Management Services was among the departments that the Legislature reviewed under the Florida Government Accountability Act^{1, 2}. The Florida Government Accountability Act previously subjected most state agencies to a "sunset" review process to determine whether the agency should be retained, modified, or abolished. Part of that review included an examination of agency advisory committees.³

Two statutorily created advisory entities, the Florida Small and Minority Business Advisory Council and the Minority Business Certification Task Force, are assigned to the Office of Supplier Diversity within the Department of Management Services (DMS) to assist in specified responsibilities.⁴

The Minority Business Certification Task Force (Task Force) was created in s. 287.0943, F.S., to propose uniform criteria and procedures by which participating entities and organizations can qualify businesses to participate in procurement or contracting programs as certified minority business enterprises.^{5,6} The primary purpose of the Task Force is to propose a final list of the criteria and procedures for consideration by the Secretary of DMS. The Task Force is authorized to seek technical assistance from qualified providers of technical, business, and managerial expertise to ensure the reliability of the certification criteria developed.

The 19-member Task Force appointed by the Secretary of DMS is intended to be regionally balanced and comprised of officials representing governmental entities who administer programs to assist minority businesses procure or develop government-sponsored programs. Six organizations (Florida League of Cities, Florida Association of Counties, Florida School Boards Association, Association of Special Districts, Florida Association of Minority Business Enterprise Officials, and Florida Association of Government Purchasing Officials) are authorized to appoint up to two members to the Task Force. The Office of Supplier Diversity within DMS appoints seven members, consisting of three representatives of minority business enterprises, two office representatives, and two at-large members. The chairperson of the Legislative Committee on Intergovernmental Relations or designee is to serve as an ex officio member.⁷

The Task Force has fulfilled its statutory responsibility to propose uniform minority business certification criteria. DMS placed the criteria in the Florida Administrative Code over 14 years ago.⁸ According to the Office of Supplier Diversity, the Task Force has not met in recent years primarily because the use

¹ See ss. 11.901-11.920, F.S. (2010). The Florida Government Accountability Act was repealed during the 2011 Regular Session. See chapter 2011-34, L.O.F. (2011).

² See s. 11.905, F.S. (2010).

³ See s. 11.906, F.S. (2010).

⁴ The Office of Supplier Diversity's function is to improve business and economic opportunities for Florida's minority, women, and service-disabled veteran business enterprises. To accomplish this goal the office's primary functions include certification of business enterprises, advocacy and outreach, and matchmaking activities. See the DMS website for information on the responsibilities of the office.

⁵ See chapter 94-322, L.O.F.

⁶ Pursuant to s. 20.03(8), F.S., a task force created by specific statutory enactment is, by definition, "limited to no more than 3 years, appointed to study a specific problem and recommend a solution or policy alternative with respect to the problem, and terminates upon the completion of its assignment."

⁷ The Florida Legislative Committee on Intergovernmental Relations (LCIR) was not funded in the FY 2010-11 General Appropriations Act, and the Committee ceased operations on June 30, 2010.

⁸ Office of Program Policy Analysis & Government Accountability Sunset Review Report, at 4, *Department of Management Services Advisory Committees Assessment*, Report No. 08-S11 (December 2008).

of reciprocal agreements (agreements to accept a business's certified minority enterprise status issued by other entities) ended in 2006.⁹

Abolishing the Task Force was recommended by the Office of Program Policy Analysis & Government Accountability as part of its sunset review of DMS.

Effect of Proposed Changes

The bill abolishes the Minority Business Certification Task Force. Abolishment will have no effect since the statutory responsibility of the Task Force has been fulfilled, the Task Force has not been functional for several years, and the statutory authority of the Florida Advisory Council on Small and Minority Business Development permits the council to provide guidance and assistance to the Office of Supplier Diversity relating to the efforts of that office related to reciprocal agreements.¹⁰

B. SECTION DIRECTORY:

Section 1. Amends s. 287.0943, F.S., deleting provisions which establish and reference the Minority Business Certification Task Force.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁹ Information provided on November 21, 2011, by Mr. Thad Fortune, Certification Administrator (Senior Manager), Office of Supplier Diversity, DMS.

¹⁰ According to the Office of Supplier Diversity, the office has begun reaching out to local governments for reciprocal agreements, now referred to as certification agreements. The office has already received some guidance from the Florida Advisory Council on Small and Minority Business Development relating to reciprocal agreements. Information first provided on January 26, 2010, by Mr. Torey Alston, Executive Director, Office of Supplier Diversity, DMS. Mr. Alston is no longer with DMS. The information, in part, was confirmed by Mr. Thad Fortune, Certification Administrator, Office of Supplier Diversity on November 21, 2011. Mr. Fortune did state the renewal of use of the Task Force had been discussed; however, it had not been pursued by DMS.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

HB 4103

2012

1 A bill to be entitled
 2 An act relating to the certification of minority
 3 business enterprises; amending s. 287.0943, F.S.;

4 deleting provisions establishing the Minority Business
 5 Certification Task Force, requiring that criteria for
 6 the certification of minority business enterprises be
 7 approved by the task force, and authorizing the task
 8 force to amend the statewide and interlocal agreement
 9 for the certification of minority business
 10 enterprises; conforming provisions; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (2) and paragraph (e) of subsection
 16 (3) of section 287.0943, Florida Statutes, are amended to read:
 17 287.0943 Certification of minority business enterprises.-

18 ~~(2)(a) The office is hereby directed to convene a~~
 19 ~~"Minority Business Certification Task Force." The task force~~
 20 ~~shall meet as often as necessary, but no less frequently than~~
 21 ~~annually.~~

22 ~~(b) The task force shall be regionally balanced and~~
 23 ~~comprised of officials representing the department, counties,~~
 24 ~~municipalities, school boards, special districts, and other~~
 25 ~~political subdivisions of the state who administer programs to~~
 26 ~~assist minority businesses in procurement or development in~~
 27 ~~government sponsored programs. The following organizations may~~
 28 ~~appoint two members each of the task force who fit the~~

29 ~~description above:~~

- 30 ~~1. The Florida League of Cities, Inc.~~
- 31 ~~2. The Florida Association of Counties.~~
- 32 ~~3. The Florida School Boards Association, Inc.~~
- 33 ~~4. The Association of Special Districts.~~
- 34 ~~5. The Florida Association of Minority Business Enterprise~~
- 35 ~~Officials.~~
- 36 ~~6. The Florida Association of Government Purchasing~~
- 37 ~~Officials.~~

38

39 ~~In addition, the Office of Supplier Diversity shall appoint~~

40 ~~seven members consisting of three representatives of minority~~

41 ~~business enterprises, one of whom should be a woman business~~

42 ~~owner, two officials of the office, and two at-large members to~~

43 ~~ensure balance. A quorum shall consist of one-third of the~~

44 ~~current members, and the task force may take action by majority~~

45 ~~vote. Any vacancy may only be filled by the organization or~~

46 ~~agency originally authorized to appoint the position.~~

47 ~~(c) The purpose of the task force will be to propose~~

48 ~~uniform criteria and procedures by which participating entities~~

49 ~~and organizations can qualify businesses to participate in~~

50 ~~procurement or contracting programs as certified minority~~

51 ~~business enterprises in accordance with the certification~~

52 ~~criteria established by law.~~

53 ~~(d) A final list of the criteria and procedures proposed~~

54 ~~by the task force shall be considered by the secretary. The task~~

55 ~~force may seek technical assistance from qualified providers of~~

56 ~~technical, business, and managerial expertise to ensure the~~

57 ~~reliability of the certification criteria developed.~~

58 (a)~~(e)~~ In assessing the status of ownership and control,
 59 certification criteria shall, at a minimum:

60 1. Link ownership by a minority person as defined in s.
 61 288.703, or as dictated by the legal obligations of a certifying
 62 organization, to day-to-day control and financial risk by the
 63 qualifying minority owner, and to demonstrated expertise or
 64 licensure of a minority owner in any trade or profession that
 65 the minority business enterprise will offer to the state when
 66 certified. Businesses must comply with all state licensing
 67 requirements before becoming certified as a minority business
 68 enterprise.

69 2. If present ownership was obtained by transfer, require
 70 the minority person on whom eligibility is based to have owned
 71 at least 51 percent of the applicant firm for a minimum of 2
 72 years, when any previous majority ownership interest in the firm
 73 was by a nonminority who is or was a relative, former employer,
 74 or current employer of the minority person on whom eligibility
 75 is based. This requirement does not apply to minority persons
 76 who are otherwise eligible who take a 51-percent-or-greater
 77 interest in a firm that requires professional licensure to
 78 operate and who will be the qualifying licenseholder for the
 79 firm when certified. A transfer made within a related immediate
 80 family group from a nonminority person to a minority person in
 81 order to establish ownership by a minority person is ~~shall be~~
 82 deemed to be ~~have been~~ made solely for purposes of satisfying
 83 certification criteria and renders ~~shall render~~ such ownership
 84 invalid for purposes of qualifying for such certification if the

85 combined total net asset value of all members of such family
 86 group exceeds \$1 million. For purposes of this subparagraph, the
 87 term "related immediate family group" means one or more children
 88 under 16 years of age and a parent of such children or the
 89 spouse of such parent residing in the same house or living unit.

90 3. Require that prospective certified minority business
 91 enterprises be currently performing or seeking to perform a
 92 useful business function. For purposes of this subparagraph, the
 93 term ~~A~~ "useful business function" means ~~is defined as~~ a business
 94 function that ~~which~~ results in the provision of materials,
 95 supplies, equipment, or services to customers. Acting as a
 96 conduit to transfer funds to a nonminority business does not
 97 constitute a useful business function unless it is done so in a
 98 normal industry practice. As used in this section, the term
 99 "acting as a conduit" means, in part, not acting as a regular
 100 dealer by making sales of material, goods, or supplies from
 101 items bought, kept in stock, and regularly sold to the public in
 102 the usual course of business. Brokers, manufacturer's
 103 representatives, sales representatives, and nonstocking
 104 distributors are considered as conduits that do not perform a
 105 useful business function, unless normal industry practice
 106 dictates.

107 (b) (f) When a business receives payments or awards
 108 exceeding \$100,000 in any one fiscal year, a review of its
 109 certification status or an audit must ~~will~~ be conducted within 2
 110 years. In addition, the Office of Supplier Diversity may, as it
 111 deems appropriate, require that random reviews or audits ~~will~~ be
 112 conducted ~~as deemed appropriate by the Office of Supplier~~

113 ~~Diversity.~~

114 (c)~~(g)~~ The certification criteria ~~approved by the task~~
 115 ~~force and~~ adopted by the Department of Management Services shall
 116 be included in a statewide and interlocal agreement as defined
 117 in s. 287.09431 and, in accordance with s. 163.01, shall be
 118 executed according to the terms included therein.

119 (d)~~(h)~~ The certification procedures should allow an
 120 applicant seeking certification to designate on the application
 121 form the information the applicant considers to be proprietary,
 122 confidential business information. As used in this paragraph,
 123 "proprietary, confidential business information" includes, but
 124 is not limited to, any information that would be exempt from
 125 public inspection pursuant to the provisions of chapter 119;
 126 trade secrets; internal auditing controls and reports; contract
 127 costs; or other information the disclosure of which would injure
 128 the affected party in the marketplace or otherwise violate s.
 129 286.041. The executor in receipt of the application shall issue
 130 written and final notice of any information for which
 131 noninspection is requested but not provided for by law.

132 (e)~~(i)~~ A business that is certified under ~~the provisions~~
 133 ~~of~~ the statewide and interlocal agreement is ~~shall be~~ deemed a
 134 certified minority enterprise in all jurisdictions or
 135 organizations where the agreement is in effect, and that
 136 business is deemed available to do business as such within any
 137 such jurisdiction or with any such organization statewide. All
 138 state agencies must accept minority business enterprises
 139 certified in accordance with the statewide and interlocal
 140 agreement of s. 287.09431, and that business is ~~shall~~ also ~~be~~

HB 4103

2012

141 deemed a "certified minority business enterprise" as defined in
 142 s. 288.703. However, any governmental jurisdiction or
 143 organization that administers a minority business purchasing
 144 program may reserve the right to establish further certification
 145 procedures necessary to comply with federal law.

146 ~~(j) The statewide and interlocal agreement shall be guided~~
 147 ~~by the terms and conditions found therein and may be amended at~~
 148 ~~any meeting of the task force and subsequently adopted by the~~
 149 ~~secretary of the Department of Management Services. The amended~~
 150 ~~agreement must be enacted, initialed, and legally executed by at~~
 151 ~~least two-thirds of the certifying entities party to the~~
 152 ~~existing agreement and adopted by the state as originally~~
 153 ~~executed in order to bind the certifying entity.~~

154 ~~(k) The task force shall meet for the first time no later~~
 155 ~~than 45 days after the effective date of this act.~~

156 (3)

157 (e) Any participating program receiving three or more
 158 challenges to its certification decisions pursuant to subsection
 159 (4) from other organizations that are executors to the statewide
 160 and interlocal agreement, is ~~shall be~~ subject to a review by the
 161 office, as provided in paragraphs (a) and (b), of the
 162 organization's capacity to perform under such agreement and in
 163 accordance with the certification core criteria ~~established by~~
 164 ~~the task force~~. The office shall submit a report to the
 165 secretary of the Department of Management Services regarding the
 166 results of the review.

167 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 12-01 OGSR U.S. Census Bureau Address Information
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Thompson <i>JTH</i>	Williamson <i>AW</i>

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Local Update of Census Addresses program (LUCA program) was a decennial census geographic partnership program that allowed the United States Census Bureau to benefit from local knowledge in developing its master address file for the 2010 census.

Current law provides a public record exemption for United States Census Bureau address information held by an agency pursuant to the LUCA program. The LUCA program officially ended as of March 31, 2010. As such, there is no need to continue the public record exemption.

The bill repeals the public record exemption for United States Census Bureau address information held by an agency pursuant to the LUCA program.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Local Update of Census Addresses Program

The Local Update of Census Addresses program (LUCA program) was a decennial census geographic partnership program that allowed the Census Bureau to benefit from local knowledge in developing its master address file for the 2010 census. The LUCA program was made possible by the Census Address List Improvement Act of 1994,⁴ which provides an opportunity for designated representatives of local, state, and tribal governments to review addresses contained in the master address file.⁵

Governments that opted to participate in the LUCA program were required to designate a LUCA liaison to review the portion of the census address list covering the area under their jurisdiction. The LUCA liaison was subject to the same confidentiality requirements as census workers and was prohibited from disclosing census information.⁶ LUCA program participants were required to review a set of security guidelines and sign a confidentiality agreement promising to protect the confidential address list, which included corresponding maps and address tallies.

Public Record Exemption under Review

In 2007, the Legislature created a public record exemption for United States Census Bureau address information held by an agency pursuant to the LUCA program.⁷ Address information includes maps

¹ Section 119.15, F.S.

² Section 24(c), Art. 1 of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Public Law 103-430.

⁵ U.S. Census Bureau, 2010 Decennial Census Local Update of Census Addresses program, www.census.gov/geo/www/luca2010/luca.html (last viewed November 14, 2011).

⁶ Pursuant to Title 13 U.S.C., the address list is confidential.

⁷ Chapter 2007-250, L.O.F.; codified as s. 119.071(1)(g), F.S.

showing structure location points, agency records verifying addresses, and agency records identifying address errors or omissions.⁸ Confidential and exempt address information⁹ may be released to another agency or governmental entity in the furtherance of its duties and responsibilities under the LUCA program.¹⁰ Also, agencies are authorized to access any other confidential or exempt information held by another agency if access is necessary for the receiving agency to perform its duties and responsibilities under the LUCA program.¹¹

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.

The LUCA program officially ended as of March 31, 2010.¹² As such, there is no need to continue the public record exemption.

Effect of Bill

The bill repeals the public record exemption for United States Census Bureau address information held by an agency pursuant to the LUCA program.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to repeal the public record exemption for United State Census Bureau address information.

Section 2 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁸ Section 119.071(1)(g)1., F.S.

⁹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985)

¹⁰ Section 119.071(1)(g)2., F.S.

¹¹ Section 119.071(1)(g)3., F.S.

¹² U.S. Census Bureau, LUCA Closeout Phase, http://www.census.gov/geo/www/luca2010/luca_co.html, (last viewed November 14, 2011).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

PCB GVOPS 12-01

ORIGINAL

2012

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 119.071, F.S., relating
4 to an exemption from public records requirements for
5 United States Census Bureau address information;
6 repealing the public record exemption; providing an
7 effective date.



8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Paragraph (g) of subsection (1) of section
12 119.071, Florida Statutes, is repealed.

13 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 12-02 OGSR Donor Information/Publicly Owned House Museums
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 810

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Thompson 	Williamson 

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for information that identifies a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark. The exemption is applicable only if the donor or prospective donor wishes to remain anonymous.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Publicly Owned House Museums Designated as National Historic Landmarks

The purpose of the National Historic Landmarks Program is to identify and designate National Historic Landmarks, and to encourage the long range preservation of nationally significant properties that illustrate or commemorate the history and prehistory of the United States. The National Park Service administers the National Historic Landmarks Program on behalf of the Secretary of the Interior.⁴

Currently, there are two publicly owned house museums in Florida that are designated by the United States Department of the Interior as National Historic Landmarks.⁵ The two houses are the Marjorie Kinnan Rawlings Historic State Park (Park) in Cross Creek, which is owned by the Florida Department of Environmental Protection, and the Vizcaya Museum and Gardens (Museum), which is owned by Miami-Dade County.

Public Record Exemption under Review

In 2007, the Legislature created a public record exemption for information that identifies a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark. The exemption is applicable only if the donor or prospective donor wishes to remain anonymous.⁶

¹ Section 119.15, F.S.

² Section 24(c), Art. 1 of the State Constitution

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ See 36 C.F.R. 65.

⁵ Information received from Dr. Barbara Mattick, Ph.D., Survey & Registration Supervisor, National Register, National Historic Landmarks Coordinator, Bureau of Historic Preservation, Florida Department of State, on November 18, 2011.

⁶ Chapter 2007-213, L.O.F.; codified as s. 267.076, F.S.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.

Donors and prospective donors to the Park have never requested to have their information protected from public disclosure.⁷ However, Park staff have been unaware of the exemption and, therefore, have never attempted to offer application of the exemption to donors or prospective donors.⁸ The donations to the Park between 2007 and 2010 totaled approximately \$13,000 and, in 2011, the park received two donations totaling approximately \$15,000.⁹

Conversely, donors and prospective donors to the Museum have requested that their information be protected from public disclosure.¹⁰ The Museum informs donors and prospective donors as a part of the solicitation process that the option for anonymity is available.¹¹ According to the Museum, anonymity for donors and prospective donors is necessary for the development of a robust, charitable, support program.¹² In 2010-2011, Vizcaya received approximately eight donations totaling \$483,941.¹³

If reenacted, the Park would likely begin to use the exemption, and the Museum would continue to use it.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for information that identifies a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark.

B. SECTION DIRECTORY:

Section 1 amends s. 267.076, F.S., to reenact the public record exemption for information that identifies a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark.

Section 2 provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁷ Open Government Sunset Review of s. 267.076, F.S., relating to publicly owned house museum designated as a National Historic Landmark, questionnaire by the Senate Committee on Environmental Preservation and Conservation in cooperation with the House Governmental Operations Subcommittee, received from the Department of Environmental Protection on June 21, 2011, at question 2. (On file with the Government Operations Subcommittee).

⁸ *Id.* at question 4.

⁹ *Id.* at question 1.

¹⁰ Open Government Sunset Review of s. 267.076, F.S., relating to publicly owned house museum designated as a National Historic Landmark, questionnaire by the Senate Committee on Environmental Preservation and Conservation in cooperation with the House Governmental Operations Subcommittee, received from Lynn Summers, Executive Director for the Vizcayans, Inc., July 1, 2011, at question 2. (On file with the Government Operations Subcommittee).

¹¹ *Id.* at question 5.

¹² *Id.* at question 11.

¹³ *Id.* at question 1.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act; amending s. 267.076, F.S., relating
to an exemption from public records requirements for
information that identifies a donor or prospective
donor to publicly owned house museums designated by
the United States Department of Interior as National
Historic Landmarks who desires to remain anonymous;
removing the scheduled repeal of the exemption;
providing an effective date.

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

Section 1. Section 267.076, Florida Statutes, is amended
to read:

267.076 Confidentiality of certain donor information
related to publicly owned house museums designated as National
Historic Landmarks.—Information that would identify a donor or
prospective donor to a publicly owned house museum designated by
the United States Department of the Interior as a National
Historic Landmark who desires to remain anonymous is
confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
of the State Constitution. ~~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 October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 12-03 OGSR Donor Information/Historic Preservation of the City of St.

Augustine

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: IDEN./SIM. **BILLS:** SB 832

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Thompson <i>JKT</i>	Williamson <i>Raw</i>

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for the identity of a donor or prospective donor to the University of Florida direct-support organization for the City of St. Augustine, who desires to remain anonymous, and all information identifying such donor or prospective donor.

The bill reenacts the public record exemption, which will repeal on October 2, 2012, if this bill does not become law. It also removes superfluous language, which restates the type of information that is confidential and exempt from public records requirements.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Historic Preservation, City of St. Augustine

Current law provides for the long-term historic preservation of state-owned historic properties in St. Augustine through a contract with the University of Florida (UF). The goal of the contract is to enhance existing educational programs in historic preservation, archaeology, and cultural resource management at UF while simultaneously meeting the needs for historic preservation in St. Augustine.⁴ UF is authorized to contract with a direct-support organization (DSO) in carrying out its historic preservation and historic preservation education activities.⁵

The UF DSO for the City of St. Augustine is organized to assist UF in carrying out its dual historic preservation and historic preservation education purposes and responsibilities for the City of St. Augustine by:

- Raising money;
- Submitting requests for and receiving grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals;
- Receiving, holding, investing, and administering property; and
- Making expenditures to or for the benefit of UF.⁶

The DSO must be incorporated under chapter 617, F.S., approved by the Department of State as a not-for-profit,⁷ and governed by a board of directors.⁸

¹ Section 119.15, F.S.

² Section 24(c), Art. 1 of the State Constitution

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Section 267.1735(1), F.S.

⁵ Section 267.1735(4), F.S.

⁶ Section 267.1736(1), F.S.

Public Record Exemption under Review

In 2007, the Legislature created a public record exemption for the identity of a donor or prospective donor to the DSO, who desires to remain anonymous, and all information identifying such donor or prospective donor.⁹ The anonymity of the donor or prospective donor must be maintained in the auditor's report.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.¹⁰

According to UF, the DSO was incorporated on June 28, 2010, and held its first board meeting on February 11, 2011.¹¹ The DSO has not conducted any fundraising activities since its existence.¹² Consequently, the exemption has not yet been utilized; however, UF fully anticipates that the use of the exemption will prove beneficial to future fundraising efforts of the DSO.¹³

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for the identity of a donor or prospective donor to the DSO, who desires to remain anonymous. It also removes superfluous language, which restates the type of information that is confidential and exempt¹⁴ from public records requirements.

B. SECTION DIRECTORY:

Section 1 amends s. 267.1736, F.S., to reenact the public record exemption for the identity of a donor or prospective donor to the UF DSO for the City of St. Augustine.

Section 2 provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁷ Section 267.1736(1)(a), F.S.

⁸ Section 267.1736(2), F.S.

⁹ Chapter 2007-77, L.O.F.; codified as s. 267.1736(9), F.S.

¹⁰ Section 267.1736(9)(b), F.S.

¹¹ Open Government Sunset Review of s. 267.1736(9), F.S., relating to the public record exemption for the DSO, joint questionnaire by Senate and House staff, July 29, 2011, at question 2. (On file with the Government Operations Subcommittee).

¹² *Id.* at question 4.

¹³ *Id.* at questions 6, 8, 9, and 13.

¹⁴ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act; amending s. 267.1736, F.S.,
relating to an exemption from public records
requirements for information identifying a donor or
prospective donor to the direct-support organization
established to assist the University of Florida in the
historic preservation of the City of St. Augustine;
removing superfluous language; removing the scheduled
repeal of the exemption; providing an effective date.

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

Section 1. Subsection (9) of section 267.1736, Florida
Statutes, is amended to read:

267.1736 Direct-support organization.—

(9)(a) Any information identifying ~~The identity of~~ a donor
or prospective donor to the direct-support organization who
desires to remain anonymous, ~~and all information identifying~~
~~such donor or prospective donor,~~ is confidential and exempt from
~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
Constitution; and that anonymity must be maintained in the
auditor's report. The university and the Auditor General shall
have access to all records of the direct-support organization
upon request.

~~(b) This subsection 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~~

PCB GVOPS 12-03

ORIGINAL

2012

29 ~~repeal through reenactment by the Legislature.~~

30 Section 2. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 12-04 OGSR Insurance Claim Data Exchange Information

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: IDEN./SIM. BILLS: SB 446

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Thompson	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Department of Revenue (DOR) is required to develop and operate a data match system that identifies noncustodial parents who owe past-due child support and who also have a claim with an insurer. This process allows insurers to voluntarily provide DOR with the name, address, and if known, date of birth and social security number or other taxpayer identification number for each noncustodial parent identified as having a claim. The data can be used only for purposes of child support enforcement.

Current law provides that information obtained by DOR pursuant to the insurance claim data exchange is confidential and exempt from public records requirements until DOR determines if a match exists. If a match does exist, the match data is no longer confidential and exempt and is available for public disclosure. If a match is not made, then the nonmatch information must be destroyed.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Insurance Claim Data Exchange

Current law requires the Department of Revenue (DOR) to develop and operate a data match system that identifies noncustodial parents who owe past-due child support and who also have a claim with an insurer. This process allows insurers to voluntarily provide DOR with the name, address, and if known, date of birth and social security number or other taxpayer identification number for each noncustodial parent identified as having a claim.⁴ The data can be used only for purposes of child support enforcement.⁵

An insurer may provide DOR with the needed information in one of the following ways:

- An insurer may provide the required data for each claim directly to DOR electronically so it can conduct a data match;
- An insurer may receive or access data from DOR and conduct a data match of all noncustodial parents who have a claim with the insurer and who owe past-due child support, and submit to DOR the match data regarding each noncustodial parent; or
- An insurer may authorize an insurance claim data collection organization to complete either of the two options.⁶

Due to the variety of insurance claim data submission methods, it is possible for DOR to receive information on individuals who have a claim with an insurer and who do not owe child support.

¹ Section 119.15, F.S.

² Section 24(c), Art. 1 of the State Constitution

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Section 409.25659(2), F.S.

⁵ Section 409.25659(5), F.S.

⁶ Section 409.25659(2)(a) – (c), F.S.

Implementation of the Insurance Claim Data Exchange

In 2004, DOR contacted most of the top 25 insurers in the state. During this time, insurers were responding to claims resulting from damage caused during the 2004 hurricane season. Therefore, DOR decided to postpone working on the insurance claim data exchange initiative at the request of those insurers.⁷

In February 2006, Congress passed the Deficit Reduction Act of 2005 (DRA). The DRA authorizes the Federal Department of Health and Human Services (HHS) to compare information concerning individuals owing past-due child support with information maintained by insurers concerning insurance claims, settlements, awards, and payments. It also allows HHS to furnish information resulting from data matches to state agencies responsible for child support enforcement.⁸

In November 2008, DOR began data matching activities with the federal program and began issuing income deduction notices on matches.⁹ For the period of November 2008 through October 2009, DOR received 2,996 data matches from the federal program. Of those matches, 422 already had been made by DOR through other means.¹⁰ According to DOR, more than \$1.6 million has been collected since DOR implemented the federal matching program.¹¹

During the 2009 Session, there was discussion over whether the federal voluntary insurance data match program would replace the state's voluntary program. As such, DOR sent 84 letters to Florida based insurance companies, from November 2009 through February 2010, inviting them to participate in the voluntary state program. DOR received only two responses, both indicating the company does not handle personal liability insurance. DOR sent an additional 135 letters to Florida based insurance companies in February 2011. As of June 1, 2011, DOR had received three responses including one from Citizens Property Insurance Corporation.¹²

To date, DOR has not begun using the state data match system, but it is working with Citizens Property Insurance Corporation to begin data matching by 2012.¹³ Upon full implementation, the state program will work similarly to the federal program. DOR reports that as of May 2011, the number of noncustodial parents eligible to be matched using the insurance claim data exchange is 448,965.¹⁴

Public Record Exemption Review

Current law provides that information obtained by the Department of Revenue (DOR) pursuant to the insurance claim data exchange is confidential and exempt¹⁵ from public records requirements until DOR determines if a match exists. If a match does exist, the match data is no longer confidential and exempt and is available for public disclosure. If a match is not made, then the nonmatch information must be destroyed.¹⁶

⁷ Staff analysis for HB 7091 (2010) by the Governmental Affairs Policy Committee, March 5, 2010, at 3.

⁸ Pub. L. No. 109-171.

⁹ Senate Interim Report 2012-301 by the Committee on Children, Families, and Elder Affairs (September 2011), at 3.

¹⁰ Staff analysis for HB 7091 (2010) by the Governmental Affairs Policy Committee, March 5, 2010, at 4.

¹¹ Insurance Claim Data Exchange background information received from DOR, June 24, 2011 (on file with the Government Operations Subcommittee).

¹² *Id.*

¹³ Citizens Property Insurance Corporation currently is not participating in the federal matching program.

¹⁴ Meeting with staff of DOR, July 12, 2011.

¹⁵ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹⁶ Section 409.25661(1), F.S.

Pursuant to the Open Government Sunset Review Act, the exemption was scheduled to repeal on October 2, 2009, and again on October 2, 2010; however, as a result of the Open Government Sunset Review during the 2008 and 2009 interims, the exemption repeal date was eventually delayed until October 2, 2012, in order to allow DOR time to determine the success of the federal data match program.

DOR has requested that the exemption be reenacted. According to DOR, maintaining the exemption for personal information obtained from insurers would allow data matching efforts to continue while keeping the information confidential and exempt for a limited period of time. Without the public record exemption, insurance providers would be less inclined to participate in any matching.¹⁷

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for information obtained by the Department of Revenue pursuant to the insurance claim data exchange.

B. SECTION DIRECTORY:

Section 1 amends s. 409.25661, F.S., to reenact the public record exemption for information obtained by the Department of Revenue pursuant to the insurance claim data exchange.

Section 2 provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹⁷ Insurance Claim Data Exchange background information received from DOR, June 24, 2011 (on file with the Government Operations Subcommittee).

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

PCB GVOPS 12-04

ORIGINAL

2012

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 409.25661, F.S.,
 4 relating to an exemption from public records
 5 requirements for insurance claim data exchange
 6 information used for identifying parents who owe past
 7 due child support; removing the scheduled repeal of
 8 the exemption; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Section 409.25661, Florida Statutes, is amended
 13 to read:

14 409.25661 Public records exemption for insurance claim
 15 data exchange information.-

16 ~~(1)~~ Information obtained by the Department of Revenue
 17 pursuant to s. 409.25659 is confidential and exempt from s.
 18 119.07(1) and s. 24(a), Art. I of the State Constitution until
 19 such time as the department determines whether a match exists.
 20 If a match exists, such information becomes available for public
 21 disclosure. If a match does not exist, the nonmatch information
 22 shall be destroyed as provided in s. 409.25659.

23 ~~(2) This section is subject to the Open Government Sunset~~
 24 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 25 ~~on October 2, 2012, unless reviewed and saved from repeal~~
 26 ~~through reenactment by the Legislature.~~

27 Section 2. This act shall take effect October 1, 2012.

Open Government Sunset Review Act

119.15 Legislative review of exemptions from public meeting and public records requirements.—

(1) This section may be cited as the “Open Government Sunset Review Act.”

(2) This section provides for the review and repeal or reenactment of an exemption from s. 24, Art. I of the State Constitution and s. 119.07(1) or s. 286.011.

This act does not apply to an exemption that:

(a) **Is required by federal law; or**

(b) **Applies solely to the Legislature or the State Court System.**

(3) In the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall be repealed on **October 2nd of the 5th year**, unless the Legislature acts to reenact the exemption.

(4)(a) A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting is:

1. Exempt from s. 24, Art. I of the State Constitution;

2. Exempt from s. 119.07(1) or s. 286.011; and

3. Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

(b) For purposes of this section, an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

(c) This section is not intended to repeal an exemption that has been amended following legislative review before the scheduled repeal of the exemption if the exemption is not substantially amended as a result of the review.

(5)(a) **By June 1** in the year before the repeal of an exemption under this section, the Division of Statutory Revision of the Office of Legislative Services shall certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

(b) Any exemption that is not identified and certified to the President of the Senate and the Speaker of the House of Representatives is not subject to legislative review and repeal under this section. If the division fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year's certification after that determination.

(6)(a) **As part of the review process, the Legislature shall consider the following:**

1. What specific records or meetings are affected by the exemption?

2. Whom does the exemption uniquely affect, as opposed to the general public?

3. What is the identifiable public purpose or goal of the exemption?

4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

5. Is the record or meeting protected by another exemption?

6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

(b) **An exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:**

1. **Allows the state or its political subdivisions to effectively and efficiently administer a governmental program**, which administration would be significantly impaired without the exemption;

2. **Protects information of a sensitive personal nature concerning individuals**, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. **Protects information of a confidential nature concerning entities**, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(7) **Records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law.** In deciding whether the records shall be made public, the Legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exemption of the type specified in subparagraph (6)(b)2. or subparagraph (6)(b)3. would occur if the records were made public.

(8) Notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

History.—s. 2, ch. 95-217; s. 25, ch. 98-136; s. 37, ch. 2005-251; s. 15, ch. 2006-1.

TABLE OF CONTENTS

- TAB A Section 288.075, F.S., which provides public record exemptions for economic development agencies
- TAB B Senate Proposed Bill 7012 (2012), strike-all amendment by the Senate Committee on Commerce and Tourism
- TAB C Chapter 2007-203, Law of Florida
House Bill 7201, Enrolled (2007)
House Bill 7201, Staff Analysis
- TAB D Senate Interim Project Report 2007-103 (October 2006), *Review of Public Records Exemptions Relating to Economic Development Agencies*
- Senate Interim Report 2012-302 (September 2011), *Open Government Sunset Review of s. 228.075, F.S., Public Records Exemption for Information Held by Economic Development Agencies*

A

Economic Development Agencies Public Record Exemptions

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) 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) An economic development agency may extend the period of confidentiality specified in 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 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) **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.**—

¹(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. 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.

(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.

(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.

History.—s. 1, ch. 77-75; s. 1, ch. 79-395; s. 3, ch. 83-47; s. 1, ch. 86-152; s. 1, ch. 86-180; s. 1, ch. 86-218; s. 1, ch. 89-217; s. 104, ch. 90-360; s. 245, ch. 91-224; s. 220, ch. 95-148; s. 1, ch. 95-378; s. 1, ch. 96-353; s. 135, ch. 96-406; s. 14, ch. 99-256; s. 1, ch. 2001-161; s. 5, ch. 2002-183; s. 27, ch. 2003-286; s. 55, ch. 2006-60; s. 1, ch. 2006-157; s. 1, ch. 2007-203; s. 23, ch. 2011-76; s. 148, ch. 2011-142.

¹Note.—Section 35, ch. 2011-76, provides that:

“(1) The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, for the purpose of implementing this act.

“(2) Notwithstanding any other provision of law, such emergency rules shall remain in effect for 6 months after the date adopted and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.”

1544024w1544024

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .
. .

House

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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;

1544024w1544024

13 3. Space Florida created in part II of chapter 331;

14 4. The public economic development agency of a county or
15 municipality or, if the county or municipality does not have a
16 public economic development agency, the county or municipal
17 officers or employees assigned the duty to promote the general
18 business interests or industrial interests of that county or
19 municipality or the responsibilities related thereto;

20 5. Any research and development authority created in
21 accordance with part V of chapter 159; or

22 6. Any private agency, person, partnership, corporation, or
23 business entity when authorized by the state, a municipality, or
24 a county to promote the general business interests or industrial
25 interests of the state or that municipality or county.

26 (b) "Proprietary confidential business information" means
27 information that is owned or controlled by the corporation,
28 partnership, or person requesting confidentiality under this
29 section; that is intended to be and is treated by the
30 corporation, partnership, or person as private in that the
31 disclosure of the information would cause harm to the business
32 operations of the corporation, partnership, or person; that has
33 not been disclosed unless disclosed pursuant to a statutory
34 provision, an order of a court or administrative body, or a
35 private agreement providing that the information may be released
36 to the public; and that is information concerning:

37 1. Business plans.

38 2. Internal auditing controls and reports of internal
39 auditors.

40 3. Reports of external auditors for privately held
41 companies.

1544024w1544024

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

43 (2) PLANS, INTENTIONS, AND INTERESTS.—

44 (a) ~~If Upon written request from~~ a private corporation,
45 partnership, or person requests in writing before an economic
46 incentive agreement is signed that, information held by an
47 economic development agency maintain the confidentiality of
48 information concerning plans, intentions, or interests of a such
49 private corporation, partnership, or person to locate, relocate,
50 or expand any of its business activities in this state, the
51 information is confidential and exempt from s. 119.07(1) and s.
52 24(a), Art. I of the State Constitution. The information will
53 remain confidential and exempt for 12 months after the date an
54 economic development agency receives a request for
55 confidentiality, for 90 days after the signing of an economic
56 incentive agreement, or until the information is otherwise
57 disclosed, whichever occurs first.

58 ~~(b) An economic development agency may extend the period of~~
59 ~~confidentiality specified in paragraph (a) for up to an~~
60 ~~additional 12 months upon written request from the private~~
61 ~~corporation, partnership, or person who originally requested~~
62 ~~confidentiality under this section and upon a finding by the~~
63 ~~economic development agency that such private corporation,~~
64 ~~partnership, or person is still actively considering locating,~~
65 ~~relocating, or expanding its business activities in this state.~~
66 ~~Such a request for an extension in the period of confidentiality~~
67 ~~must be received prior to the expiration of any confidentiality~~
68 ~~originally provided under this section.~~

69 ~~(b)(e)~~ A public officer or employee may not enter into a
70 binding agreement with any corporation, partnership, or person

1544024w1544024

71 who has requested confidentiality of information under this
72 subsection until 90 days after the information is made public
73 unless:

74 1. The public officer or employee is acting in an official
75 capacity;

76 2. The agreement does not accrue to the personal benefit of
77 such public officer or employee; and

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

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

84 (4) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—
85 Proprietary confidential business information held by an
86 economic development agency is confidential and exempt from s.
87 119.07(1) and s. 24(a), Art. I of the State Constitution, until
88 such information is otherwise publicly available or is no longer
89 treated by the proprietor as proprietary confidential business
90 information.

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

97 (6) ECONOMIC INCENTIVE PROGRAMS.—

98 (a) The following information held by an economic
99 development agency pursuant to the administration of an economic

1544024w1544024

100 incentive program for qualified businesses is confidential and
101 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
102 Constitution for a period not to exceed the duration of the
103 incentive agreement, including an agreement authorizing a tax
104 refund or tax credit, or upon termination of the incentive
105 agreement:

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

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

114 ~~2.3. The average wage actually paid by the business for~~
115 ~~those jobs created by the project or~~ An individual employee's
116 personal identifying information that ~~which~~ is held as evidence
117 of the achievement or nonachievement of the wage requirements of
118 the tax refund, tax credit, or incentive agreement programs or
119 of the job creation requirements of such programs.

120 ~~3.4. The amount of:~~

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

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

124 c. Intangible personal property taxes paid pursuant to
125 chapter 199;

126 d. Insurance premium taxes paid pursuant to chapter 624;

127 e. Excise taxes paid on documents pursuant to chapter 201;

128 f. Ad valorem taxes paid, as defined in s. 220.03(1); or

1544024w1544024

129 g. State communications services taxes paid pursuant to
130 chapter 202.

131

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

136 (b)1. The following information held by an economic
137 development agency relating to a specific business participating
138 in an economic incentive program is not confidential or exempt
139 from disclosure 90 days after an economic incentive agreement is
140 signed with that business ~~An economic development agency may~~
141 ~~release:~~

142 a. The name ~~names~~ of the qualified business businesses.

143 b. The total number of jobs the ~~each~~ business committed
144 ~~expects~~ to create or retain.

145 c. The total number of jobs created or retained by the ~~each~~
146 business.

147 d. Notwithstanding s. 213.053(2), the amount of tax
148 refunds, tax credits, or incentives awarded to, ~~and~~ claimed by,
149 or, if applicable, refunded to the state by the ~~each~~ business.

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

152 2. For a business applying for certification under s.
153 288.1045 which is based on obtaining a new Department of Defense
154 contract, the total number of jobs expected and the amount of
155 tax refunds claimed may not be released until the new Department
156 of Defense contract is awarded.

157 ~~(c) An economic development agency may publish statistics~~

1544024w1544024

158 ~~in the aggregate and classified so as to prevent the~~
159 ~~identification of a single qualified applicant.~~

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

164 ~~(8) LEGISLATIVE REVIEW OF EXEMPTIONS. This section is~~
165 ~~subject to the Open Government Sunset Review Act in accordance~~
166 ~~with s. 119.15 and shall stand repealed on October 2, 2012,~~
167 ~~unless reviewed and saved from repeal through reenactment by the~~
168 ~~Legislature.~~

169 Section 2. This act shall take effect upon becoming a law.
170

171 ===== T I T L E A M E N D M E N T =====

172 And the title is amended as follows:

173 Delete everything before the enacting clause
174 and insert:

175 A bill to be entitled
176 An act relating to a review under the Open Government
177 Sunset Review Act; amending s. 288.075, F.S., which
178 provides public records exemptions for information
179 held by economic development agencies; saving from
180 repeal the exemption concerning plans, intentions, or
181 interests of a private corporation, partnership, or
182 person to locate, relocate, or expand any of its
183 business activities in this state; providing that the
184 exemption applies if a request for confidentiality is
185 made before an economic incentives agreement is
186 signed; revising the duration of the period in which

1544024w1544024

187 information may remain confidential and exempt from
188 disclosure; saving from repeal the exemption for trade
189 secrets; saving from repeal the exemption for
190 proprietary confidential business information; saving
191 from repeal the exemption for identification, account,
192 and registration numbers and sales, wage, and tax data
193 relating to a recipient of an economic development
194 incentive; providing that the taxes paid by businesses
195 participating in an economic incentive program may be
196 disclosed in the aggregate; authorizing the disclosure
197 of specified information relating to a business 90
198 days after an economic incentive agreement is signed;
199 removing the scheduled repeal of the exemptions;
200 providing an effective date.

e

c

CHAPTER 2007-203

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.

ENROLLED

HB 7201

2007 Legislature

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., which
 4 provides an exemption from public records requirements for
 5 information related to business activities and trade
 6 secrets held by an economic development agency; defining
 7 the terms "proprietary confidential business information"
 8 and "trade secret"; reorganizing the exemption; extending
 9 the period of confidentiality for trade secrets; providing
 10 a specific exemption for proprietary confidential business
 11 information; providing for expiration of the exemption;
 12 providing a specific exemption for federal employer
 13 identification numbers, unemployment compensation account
 14 numbers, and Florida sales tax registration numbers held
 15 by an economic development agency; providing a specific
 16 exemption for specified information held by an economic
 17 development agency pursuant to the administration of an
 18 economic incentive program for qualified businesses;
 19 providing for limited duration of the exemption; providing
 20 penalties; providing for future legislative review and
 21 repeal under the Open Government Sunset Review Act;
 22 providing a statement of public necessity; repealing s.
 23 288.1067, F.S., relating to the confidentiality of records
 24 held by the Office of Tourism, Trade, and Economic
 25 Development, Enterprise Florida, Inc., or county or
 26 municipal governmental entities pursuant to specified
 27 incentive programs; providing an effective date.

ENROLLED

HB 7201

2007 Legislature

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

30

31 Section 1. Section 288.075, Florida Statutes, is amended
32 to read:

33 288.075 Confidentiality of records.--

34 (1) DEFINITIONS.--As used in this section, the term:

35 (a) "Economic development agency" means:

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

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

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

41 4.(d) The public economic development agency of a county
42 or municipality or, if the county or municipality does not have
43 a public economic development agency, the county or municipal
44 officers or employees assigned the duty to promote the general
45 business interests or industrial interests of that county or
46 municipality or the responsibilities related thereto;

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

49 6.(f) Any private agency, person, partnership,
50 corporation, or business entity when authorized by the state, a
51 municipality, or a county to promote the general business
52 interests or industrial interests of the state or that
53 municipality or county.

54 (b) "Proprietary confidential business information" means
55 information that is owned or controlled by the corporation,
56 partnership, or person requesting confidentiality under this

ENROLLED

HB 7201

2007 Legislature

57 section; that is intended to be and is treated by the
 58 corporation, partnership, or person as private in that the
 59 disclosure of the information would cause harm to the business
 60 operations of the corporation, partnership, or person; that has
 61 not been disclosed unless disclosed pursuant to a statutory
 62 provision, an order of a court or administrative body, or a
 63 private agreement providing that the information may be released
 64 to the public; and that is information concerning:

65 1. Business plans.

66 2. Internal auditing controls and reports of internal
 67 auditors.

68 3. Reports of external auditors for privately held
 69 companies.

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

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

72 (a) Upon written request from a private corporation,
 73 partnership, or person, information held by an economic
 74 development agency concerning plans, intentions, or interests of
 75 such private corporation, partnership, or person to locate,
 76 relocate, or expand any of its business activities in this state
 77 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 78 I of the State Constitution for 12 months after the date an
 79 economic development agency receives a request for
 80 confidentiality or until the information is otherwise disclosed,
 81 whichever occurs first.

82 (b)~~(3)~~ An economic development agency may extend the
 83 period of confidentiality specified in paragraph (a) ~~subsection~~
 84 ~~(2)~~ for up to an additional 12 months upon written request from

ENROLLED

HB 7201

2007 Legislature

85 | the private corporation, partnership, or person who originally
 86 | requested confidentiality under this section and upon a finding
 87 | by the economic development agency that such private
 88 | corporation, partnership, or person is still actively
 89 | considering locating, relocating, or expanding its business
 90 | activities in this state. Such a request for an extension in the
 91 | period of confidentiality must be received prior to the
 92 | expiration of any confidentiality originally provided under this
 93 | section.

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

99 | 1. The public officer or employee is acting in an official
 100 | capacity;

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

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

106 | ~~(3)(4) TRADE SECRETS.--Trade secrets held by, as defined~~
 107 | ~~by s. 812.081, contained in the records of an economic~~
 108 | ~~development agency relating to the plans, intentions, or~~
 109 | ~~interests of a corporation, partnership, or person who has~~
 110 | ~~requested confidentiality pursuant to this section are~~
 111 | confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 112 | of the State Constitution for 10 years after the date an

ENROLLED

HB 7201

2007 Legislature

113 ~~economic development agency receives a request for~~
 114 ~~confidentiality or until otherwise disclosed, whichever occurs~~
 115 ~~first.~~

116 (4) PROPRIETARY CONFIDENTIAL BUSINESS

117 INFORMATION.--Proprietary confidential business information held
 118 by an economic development agency is confidential and exempt
 119 from s. 119.07(1) and s. 24(a), Art. I of the State
 120 Constitution, until such information is otherwise publicly
 121 available or is no longer treated by the proprietor as
 122 proprietary confidential business information.

123 (5) IDENTIFICATION, ACCOUNT, AND REGISTRATION NUMBERS.--A

124 federal employer identification number, unemployment
 125 compensation account number, or Florida sales tax registration
 126 number held by an economic development agency is confidential
 127 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 128 Constitution.

129 (6) ECONOMIC INCENTIVE PROGRAMS.--

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

138 1. The percentage of the business's sales occurring
 139 outside this state and, for businesses applying under s.
 140 288.1045, the percentage of the business's gross receipts

ENROLLED

HB 7201

2007 Legislature

141 derived from Department of Defense contracts during the 5 years
 142 immediately preceding the date the business's application is
 143 submitted.

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

147 3. The average wage actually paid by the business for
 148 those jobs created by the project or an employee's personal
 149 identifying information which is held as evidence of the
 150 achievement or nonachievement of the wage requirements of the
 151 tax refund, tax credit, or incentive agreement programs or of
 152 the job creation requirements of such programs.

153 4. The amount of:

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

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

157 c. Intangible personal property taxes paid pursuant to
 158 chapter 199;

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

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

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

162 g. Ad valorem taxes paid, as defined in s. 220.03(1); or

163 h. State communications services taxes paid pursuant to
 164 chapter 202.

165 (b)1. An economic development agency may release:

166 a. Names of qualified businesses.

167 b. The total number of jobs each business expects to
 168 create.

ENROLLED

HB 7201

2007 Legislature

169 c. The total number of jobs created by each business.

170 d. The amount of tax refunds, tax credits, or incentives
 171 awarded to and claimed by each business.

172 2. For a business applying for certification under s.
 173 288.1045 which is based on obtaining a new Department of Defense
 174 contract, the total number of jobs expected and the amount of
 175 tax refunds claimed may not be released until the new Department
 176 of Defense contract is awarded.

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

180 ~~(5) A public officer or employee may not enter into a~~
 181 ~~binding agreement with any corporation, partnership, or person~~
 182 ~~who has requested confidentiality of information pursuant to~~
 183 ~~this section until 90 days after the information is made public~~
 184 ~~unless:~~

185 ~~(a) The public officer or employee is acting in an~~
 186 ~~official capacity;~~

187 ~~(b) The agreement does not accrue to the personal benefit~~
 188 ~~of such public officer or employee; and~~

189 ~~(c) In the professional judgment of the officer or~~
 190 ~~employee, the agreement is necessary to effectuate an economic~~
 191 ~~development project.~~

192 (7)(6) PENALTIES.--Any person who is an employee of an
 193 economic development agency who violates the provisions of this
 194 section commits a misdemeanor of the second degree, punishable
 195 as provided in s. 775.082 or s. 775.083.

196 (8) LEGISLATIVE REVIEW OF EXEMPTIONS.--This section is

ENROLLED

HB 7201

2007 Legislature

197 subject to the Open Government Sunset Review Act in accordance
 198 with s. 119.15 and shall stand repealed on October 2, 2012,
 199 unless reviewed and saved from repeal through reenactment by the
 200 Legislature.

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

ENROLLED

HB 7201

2007 Legislature

225 | information.

226 | Section 3. Section 288.1067, Florida Statutes, is

227 | repealed.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill combines and reorganizes two public records exemptions applicable to economic development agencies into one section of law. It also creates definitions in order to provide greater clarification for application of the exemptions.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act¹ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

Public Records Exemptions for Economic Development Agencies

Currently, upon written request, certain business records are confidential and exempt from public records requirements when held by an economic development agency.² Specifically, business plans, intentions, and interests to locate, relocate, or expand business activities in Florida are confidential and exempt for 12 months.³ The period of confidentiality may be extended for an additional 12 months if the business demonstrates that it is continuing its consideration to locate, relocate, or expand its activities in Florida.⁴ Also, trade secrets are confidential and exempt for 10 years.⁵ The public records exemption was reenacted during the 2006 Regular Session.

¹ Section 119.15, F.S.

² Section 288.075(1), F.S., defines "economic development agency" to mean the Office of Tourism, Trade, and Economic Development; any industrial development authority created in accordance with part III of chapter 159, F.S., or by special law; Space Florida created in part II of chapter 331, F.S.; the public economic development agency of a county or municipality; any research development authority created in accordance with part V of chapter 159, F.S.; or 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.

³ Section 288.075(2), F.S.

⁴ Section 288.075(3), F.S.

⁵ Section 288.075(4), F.S.

In addition to this exemption, current law provides a public records exemption for certain information held by the Office of Tourism, Trade, and Economic Development (OTTED), Enterprise Florida, Inc., or county or municipal governmental entities, pursuant to an economic incentive program.⁶ Business information specifically made confidential and exempt includes:

- Employer identification numbers, unemployment compensation account numbers, and Florida sales tax registration numbers;
- Trade secrets;
- The percentage of non-state sales and the percentage of gross receipts from certain Department of Defense contracts;⁷
- Anticipated wages for new jobs to be created;
- The average wage actually paid by the business for new jobs created and detailed proprietary business information⁸ or employee personal identifying information, used to demonstrate wage and job creation requirements;⁹
- Proprietary business information¹⁰ regarding capital investment in certain circumstances; and
- The amount of certain taxes paid.¹¹

The information is protected during the period of time that a business participates in an economic incentive program with the exception of trade secrets, which remain confidential and exempt after the duration of the economic incentive agreement.

This exemption relates to the following incentive programs:

- Capital Investment Tax Credit program;¹²
- Qualified Defense Contractor (QDC) tax refund program;¹³
- Qualified Target Industry (QTI) tax refund program;¹⁴
- High Impact Performance Incentive (HIPI) grants program;¹⁵
- Quick Action Closing Fund;¹⁶ and
- Innovation Incentive Program.¹⁷

This exemption was scheduled for review under the Open Government Sunset Review Act during the 2006-2007 interim. During the 2006 Regular Session, however, the exemption was expanded to include records associated with the Innovation Incentive Program. As such, the Open Government Sunset Review date was extended from October 2, 2007 to October 2, 2011.¹⁸

⁶ Section 288.1067, F.S.

⁷ The public records exemption applies to the percentage of the business's gross receipts derived from Department of Defense contracts during the five years immediately preceding the date the business's application is submitted. Section 288.1067(1)(c), F.S.

⁸ The exemption does not provide a definition for "proprietary business information" which could be considered a broad term.

⁹ This exemption applies to proprietary business information regarding capital investment in eligible building and equipment made by the qualified business project when held by OTTED as evidence of the achievement or nonachievement of the investment requirements for the tax credit certification under s. 220.191, F.S.; for the high impact performance agreement under s. 288.108, F.S.; for the Quick Action Closing Fund agreement under s. 288.1088, F.S.; or for the Innovation Incentive Program agreement under s. 288.1089, F.S. Section 288.1067(1)(f), F.S.

¹⁰ *Id.*

¹¹ This includes taxes on sales, use, and other transactions paid pursuant to chapter 212, F.S.; corporate income taxes paid pursuant to chapter 220, F.S.; intangible personal property taxes paid pursuant to chapter 199, F.S.; emergency excise taxes paid pursuant to chapter 221, F.S.; insurance premium taxes paid pursuant to chapter 624, F.S.; excise taxes paid on documents pursuant to chapter 201, F.S.; or ad valorem taxes paid. Section 288.1067(1)(g), F.S.

¹² Section 220.191, F.S.

¹³ Section 288.1045, F.S.

¹⁴ Section 288.106, F.S.

¹⁵ Section 288.108, F.S.

¹⁶ Section 288.1088, F.S.

¹⁷ Section 288.1089, F.S.

¹⁸ Chapter 2006-59, L.O.F.

Interim Review of the Exemptions

Public debate during the 2006 Regular Session and related staff research indicated that the exemptions warranted further review. This bill is a result of that review.

EFFECT OF BILL

The bill combines and reorganizes the two exemptions into one section of law. It combines the exemptions to create five distinct categories of exemptions related to the administration of economic development by the state and local governments:

- Information related to Plans, Intentions and Interests;
- Trade Secrets;
- Proprietary Confidential Business Information;
- Identification, Account, and Registration Numbers; and
- Information related to Economic Incentive Programs.

These categories were created primarily to distinguish between the types of information held confidential and exempt and the duration of the exemption applicable to each category. Information submitted under the first and last categories is protected for a limited period, thereby eventually making general information related to policy decisions by state and local officials available to the public. Information from the remaining three categories is protected indefinitely in order to create consistency with other statutory provisions and industry practices.

The bill defines the term "proprietary confidential business information"¹⁹ and provides that the exemption for such information applies until the information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information. This definition was created based upon other definitions for the same term found throughout the statutes.

The bill provides for future review and repeal of the exemption on October 2, 2012. It also provides a public necessity statement as required by the State Constitution.

Finally, the exemption repeals s. 288.1067, F.S., because the public records exemption in that section is merged with the reorganized exemption in s. 288.075, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 288.075, F.S., by creating definitions, expanding the current public records exemption, and merging multiple public records exemptions for economic development agencies.

Section 2 provides a public necessity statement.

Section 3 repeals s. 288.1067, F.S., which provides a public records exemption for economic development agencies.

Section 4 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹⁹ 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 its business operations; that has not been 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: business plans; internal auditing controls and reports of internal auditors; and reports of external auditors for privately held companies.

1. Revenues:

None.

2. Expenditures:

See "FISCAL COMMENTS" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "FISCAL COMMENTS" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on economic development agencies, because staff responsible for complying with public records requests will require training related to changes made to the current public records exemptions. In addition, economic development agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. These agencies, however, would absorb the costs as they are part of their day-to-day responsibilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created or substantially amended public records or public meetings exemption. The bill expands the current public records exemption; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created or substantially amended public records or public meetings exemption. The bill expands the current public records exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

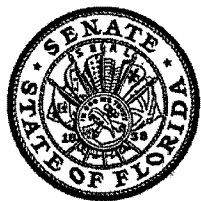
No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 18, 2007, the Government Efficiency & Accountability Council adopted two amendments to PCB GEAC 07-02. The amendments:

- Expand the definition of economic development agency, contained in the bill, to include county or municipal officers or employees who have economic development responsibilities, when these local governments do not have a specific agency responsible for those tasks.
- Add the State Communications Services Tax to the list of tax refunds protected from public disclosure.

D



The Florida Senate

Interim Project Report 2007-103

October 2006

Committee on Commerce

REVIEW OF PUBLIC RECORDS EXEMPTIONS RELATING TO ECONOMIC DEVELOPMENT AGENCIES

SUMMARY

This report reviews two public records exemptions relating to economic development: business records held by economic development agencies that include plans, intentions, and interests of a business to locate, relocate, or expand in Florida, as well as any trade secrets within such records (s. 288.075, F.S.); and information submitted to an economic development agency that qualifies businesses for state incentive programs (s. 288.1067, F.S.).

Based on the review of these public records exemptions, committee staff recommends the following:

For s. 288.075, F.S., a new category of information be included to exempt "proprietary business information" submitted by businesses to economic development agencies. It is also recommended that trade secrets be held confidential and exempt indefinitely, rather than for a period of ten years.

For s. 288.1067, F.S., business' federal employment identification number, unemployment compensation account number, and Florida sales tax registration number be held confidential indefinitely, rather than only for the time period in which the business is participating in an incentive program.

Florida Constitution that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24(a), of the State Constitution provides:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created there under; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Law¹ specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1) (a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

BACKGROUND

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the

Unless specifically exempted, all agency² records are available for public inspection. The term "public records" is defined in s. 119.011(11), F.S., to include:

¹Chapter 119, F.S.

²The term "agency" is defined in s. 119.011(2), F.S., to mean "...any state, county district, authority, or municipal officer, department, division, board, bureau, commission

... all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of the official business by any agency.

This definition of "public records" has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.³ Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.⁴

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c), of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁵ If a record is simply made exempt from

or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

³ *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁴ *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

⁵ Attorney General Opinion 85-62.

disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁶

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., establishes a review and repeal process for exemptions to public records or meetings requirements. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2 of the fifth year, unless the Legislature re-enacts the exemption. Section 119.15(4)(a), F.S., requires a law that enacts a new exemption or substantially amends an existing exemption to state that the exemption is repealed at the end of five years and that the exemption must be reviewed by the Legislature before the scheduled repeal date. Paragraph (b) provides that an exemption is substantially amended if

"the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption."

Section 119.15(6)(a), F.S., requires, as part of the review process, the consideration of the following specific questions:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?

⁶ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Section 119.15(6)(b), F.S., provides that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. The exemption allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. The exemption protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this provision, only information that would identify the individuals may be exempted; or
3. The exemption protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

While the standards in the Open Government Sunset Review Act of 1995 may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.⁷ The Legislature is only limited in its review process by constitutional requirements.

Section 288.075, F.S.

Currently, s. 288.075, F.S., provides that, upon written request, certain business records are confidential and exempt from public records law when held by an economic development agency.⁸ Specifically, business plans, intentions, and interests to locate, relocate, or expand in Florida are confidential and exempt for 12 months. The period of confidentiality may be extended for an additional 12 months if the business demonstrates that it is continuing to consider locating, relocating, or expanding in Florida. Trade secrets within such business plans, intentions, and interests are confidential and exempt for ten years.

Interim Project Report 2006-205 by the Committee on Commerce and Consumer Services found that the goal of this exemption is to facilitate communication between businesses and economic development agencies and that the exemption allows businesses to keep strategic information confidential while considering sites to locate or expand.

The report stated that records affected by this exemption are those of an economic development agency which contain or would provide information concerning plans, intentions or interests of businesses to locate, relocate, or expand in Florida. This covers a broad set of documents, which economic development agencies have specified to include: business plans and proposals, financial records, real estate contracts or leases, building information, site requirements, marketing and business strategies, business and product information, and financial incentive applications.

The report found that this exemption affects confidential business information, the disclosure of which could adversely affect the business in the marketplace. Competitors could use this information to their advantage, reacting to business plans that would otherwise be confidential absent inquiries with a

⁸ For purposes of s. 288.075, F.S., "economic development agency" means: Office of Tourism, Trade, and Economic Development; any industrial development authority created in part III of ch. 159, L.O.F., or by special law; Space Florida; the public economic development agency of a county or municipality; any research and development authority created in part V of ch. 159, L.O.F.; and any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote general business interests.

⁷ *Straughn v. Camp*, 293 So.2n 689, 694 (Fla. 1974).

government entity. In cases where businesses are considering relocation, it could cause disruption in the workforce, encouraging current employees to seek other employment. Economic development agencies also indicated that public knowledge of business plans may attract unwanted media attention or affect the company's stock price.

This exemption was set to expire on October 2, 2006. However, ch. 2006-157, L.O.F., re-enacted the exemption, and amended the exemption to:

- Narrow the initial exemption period from 24-months to 12-months, while retaining the 12-month extension option;
- Reorganize the provision for ease of understanding; and
- Remove review and repeal provisions required by the Open Government Sunset Review Act.

Public debate during the 2006 Legislative Session and related staff research indicated that the exemption warranted further review. First, because of the broad nature of the exemption for business "plans, intentions, and interests," it remained unclear as to what specific documents are held confidential. Second, it is not clear why trade secrets within these documents are held confidential and exempt for ten years in this particular exemption; generally, trade secrets are held confidential and exempt indefinitely.⁹

Section 288.1067, F.S.

Currently, s. 288.1067, F.S., provides that certain information relating to incentive programs received and held by the Office of Tourism, Trade and Economic Development (OTTED), Enterprise Florida, Inc. (EFI), or county or municipal governmental entities and their employees or agents, is confidential and exempt from public records law. The information that is specifically exempted includes:

- Employer identification numbers, unemployment compensation account numbers, and Florida sales tax registration numbers;

- Trade secret information as defined in s. 812.081, F.S.;
- The percentage of non-state sales and the percentage of gross receipts from certain Department of Defense contracts;
- Anticipated wages for new jobs to be created;
- The average wage paid by the business for new jobs created, detailed proprietary business information or employee personal identifying information used to demonstrate wage and job creation requirements;
- Proprietary business information regarding capital investment in certain circumstances; and
- The amount of Florida taxes paid.

The information is held confidential for the period of time that a business participates in an incentive program, with the exception of trade secrets, which remain confidential after the duration of the incentive agreement.

This exemption relates to the following incentive programs:

- Capital Investment Tax Credit program, s. 220.191, F.S.;
- Qualified Defense Contractor (QDC) tax refund program, s. 288.1045, F.S.;
- Qualified Target Industry (QTI) tax refund program, s. 288.106, F.S.;
- High Impact Performance Incentive (HIPI) grants program, s. 288.108, F.S.;
- Quick Action Closing Fund, s. 288.1088, F.S.; and
- Innovation Incentive Program, s. 288.1089, F.S.

Chapter 2006-59, L.O.F., expanded this exemption to include the newly created Innovation Incentive Program, which is created in ch. 2006-55, L.O.F. The purpose of the program is to provide resources for significant economic development projects, including the location or expansion of research and development entities and innovation businesses in Florida.

Section 288.1067, F.S., was scheduled for review under the Open Government Sunset Review Act during the 2006-2007 interim. However, when the exemption was expanded during the 2006 Regular Session, the expiration date of the exemption was extended, from October 2, 2007, to October 2, 2011.

⁹ Staff research indicates, that in 55 out of 58 cases, trade secrets are held confidential indefinitely. The exceptions are: s. 288.075, F.S., s. 215.44, F.S., which exempts trade secrets for ten years following the duration of an alternative investment by the state board, and s. 408.185, which exempts trade secrets for one year.

Although the review of this public records exemption is no longer mandatory, it will be beneficial to evaluate this exemption in conjunction with the review of s. 288.075, F.S. This review is intended to develop a better understanding of the relationship between the two exemptions. Both of these exemptions relate to economic development, and it is likely that a single project or business may have records that are confidential under both exemptions. Section 288.075, F.S., provides confidentiality of records in the planning stages of economic development projects, while s. 288.1067, F.S., provides confidentiality of records while a project or business is participating in an incentive program.

METHODOLOGY

The review of these public records exemptions was conducted in cooperation with staff of the Senate Governmental Oversight and Productivity Committee and in consultation with economic development agencies, including EFI and OTTED. Specific examples of project files were reviewed in order to develop a greater understanding of the documents included in such files.

FINDINGS

Section 288.075, F.S.

Pursuant to s. 288.075, F.S., “plans, intentions, and interests” of a business “to locate, relocate, or expand” in Florida are confidential and exempt. A narrow reading of the statute suggests a limited range of specified documents may be confidential and exempt, to include inquiries about available incentives.

A broader reading of the statute, however, suggests that a wide range of documents may be held confidential and exempt. As reported in Interim Report 2006-205, documents that are held confidential and exempt include: business plans and proposals, financial records, real estate contracts or leases, building information, site requirements, marketing and business strategies, business and product information, and financial incentive applications.

If the narrow interpretation of the exemption is applied, some of the documents may not fit into the categories of “plans, intentions, and interests” or “trade secrets.” To address this issue, a third category of

document – proprietary business information – could be included in the exemption. This category could include things like business plans, site requirements, workforce requirements, real estate contracts, and business and product information. Furthermore, this exemption could be maintained indefinitely.

“Proprietary business information” is distinct from a “trade secret,” which if included in documents submitted to economic development agencies, is confidential and exempt for up to ten years. Trade secret is defined in s. 812.081, F.S.,¹⁰ as

“...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it....”

The term “proprietary confidential business information” is defined in several places in Florida Statutes.¹¹ The following definition,¹² slightly modified (see *italics*), may be appropriate for use in this context:

“Proprietary confidential business information” means information, regardless of form or characteristics, which is owned or controlled by the *corporation, partnership, or person that has requested confidentiality pursuant to this section*, 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 *corporation’s, partnership’s, or person’s* business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. The term includes, but is not limited to: *Business Plans*; internal auditing controls and reports of internal

¹⁰ Trade secret is also defined in s. 688.002, F.S. This definition is referenced in many exemptions, and may be a more appropriate definition than s. 812.081, F.S.

¹¹ Definitions of proprietary confidential business information may be found in ss. 368.108, 364.183, 367.156, 366.093, 569.215, 202.195, 163.01, 1004.43, 365.174, 946.517, 287.0943, and 408.061, F.S.

¹² This definition can be found in ss. 368.108, 364.183, 367.156, and 366.093, F.S.

auditors; security measures, systems, or procedures; information concerning bids or other contractual data, the disclosure of which would impair the efforts of the corporation, partnership, or person to contract for goods or services on favorable terms; information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information; and employee personnel information unrelated to duties, qualification, or responsibilities.

If this third category of document is included in the exemption, it should provide businesses with the necessary protection they expect when working with public entities. In addition, it may encourage economic development agencies to release the information relating to “plans, intentions and interests to locate, relocate, or expand” in a timely manner.

Section 288.075(6), F.S., provides that trade secrets are confidential and exempt from public records law for a period not to exceed ten years. However, trade secret exemptions are provided in several places throughout the Florida Statutes, and the period of confidentiality is generally not limited.

More relevantly, trade secrets are confidential and exempt indefinitely in s. 288.1067, F.S., the exemption for certain information relating to incentive programs received and held by OTTED, EFI, and local governments.¹³ Finally, staff research did not ascertain any policy justification for a ten year exemption period for trade secrets within documents that are confidential and exempt pursuant to s. 288.075, F.S.

Section 288.1067, F.S.

Section 288.1067, F.S., provides that certain information relating to incentive programs received and held by the OTTED, EFI, or county or municipal governmental entities and their employees or agents, is confidential and exempt from public records law.

While this exemption may overlap with the exemption for “plans, intention, and interests” of a business “to locate, relocate, or expand” in Florida, as

¹³ Section 288.1067, F.S., was enacted in 2002. Section 288.1066, F.S., which was repealed in 2001, did include a ten year exemption on trade secret information related to incentive programs, as submitted to economic development agencies.

provided in s. 288.075, F.S., it is distinct in that it pertains to specified incentive programs. Consequently, the two exemptions need not be combined.

This review has found that some of the information listed in s. 288.1067, F.S., may need to be held confidential indefinitely, rather than for the time period that the business participates in the incentive program. These items include: a business’ federal employer identification number, unemployment compensation account number, and Florida sales tax registration number.

This type of information is required to be confidential and exempt *indefinitely* pursuant to other state and federal regulations. Pursuant to 20 CFR 603.2, state unemployment compensation agencies are required to keep federal unemployment identification numbers and federal employer identification numbers confidential. In addition, s. 443.1715, F.S., provides that,

“...when held by the Agency for Workforce Innovation (AWI), information revealing an employing unit’s or individual’s identity, obtained from the employing unit or individual is confidential and exempt from s. 119.07(1) and s. 24(a), Art.1 of the State Constitution.”

Further, s. 213.053, F.S., provides that


“...all information contained in returns, reports, accounts, or declarations received by the Department of Revenue (DOR)... is confidential and exempt from s. 119.07(1), F.S.”

RECOMMENDATIONS

Based on the review of these public records exemptions, committee staff recommends the following.

For s. 288.075, F.S., a new category of information should be included to exempt “proprietary business information” submitted by businesses when exploring or negotiating a business expansion or relocation with an economic development agency. It is also recommended that trade secrets be held confidential indefinitely, rather than for a period of ten years.

For s. 288.1067, F.S., business' federal employment identification number, unemployment compensation account number, and Florida sales tax registration number should be held confidential indefinitely, rather than only for the time period in which the business is participating in an incentive program.





The Florida Senate

Interim Report 2012-302

September 2011

Committee on Commerce and Tourism

OPEN GOVERNMENT SUNSET REVIEW OF S. 228.075, F.S., PUBLIC RECORDS EXEMPTION FOR INFORMATION HELD BY ECONOMIC DEVELOPMENT AGENCIES

Issue Description

Chapter 77-75, L.O.F., created the general economic development exemption from Florida's public records requirements in s. 288.075, F.S.

Briefly, s. 288.075, F.S., currently identifies several categories of economic development agencies, and makes confidential and exempt the following information held by such agencies:

- Plans, intentions, or interests of a private company or individual considering locating, relocating, or expanding its business operations in Florida;
- Proprietary confidential business information;
- Trade secrets;
- Sales, employee wage and tax information related to businesses receiving state economic development incentives; and
- Identification, account, and registration numbers.

The length of time the above-mentioned categories of information are shielded from the public and the conditions for publicly releasing such information vary. The law also provides a criminal penalty for any person who fails to maintain the confidentiality of this information. This exemption is repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature prior to that date.

Background

Public Records and Meetings

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24, of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

¹ Section 1390, 139, F. S. (Rev. 1892).

² Article I, s. 24, of the State Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency⁴ records are available for public inspection. The term “public record” is broadly defined to mean:

. . .all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Article I, s. 24, of the State Constitution, also provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the Legislature shall be open and noticed as provided in Article III, s. 4(e), State Constitution, except with respect to meetings exempted pursuant to this section or specifically closed by the constitution. In addition, the Sunshine Law, s. 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

Only the Legislature is authorized to create exemptions to open government requirements.⁸ An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

³ Chapter 119, F.S.

⁴ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁵ Section 119.011(12), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁸ Article I, s. 24(c), of the State Constitution.

⁹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records. Under Florida law a two-thirds vote of each house is required for a public records or public meeting exemption to be created or expanded.

¹¹ Article I, s. 24(c), of the State Constitution.

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹² If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹³

The Open Government Sunset Review Act (the act)¹⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁵

The act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?¹⁶

While the standards in the act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁷ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

... notwithstanding s. 778.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and

¹² Attorney General Opinion 85-62.

¹³ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ Section 119.15(6)(a), F.S.

¹⁷ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Public Records Exemptions for Economic Development Agencies

In 1977, the Legislature provided a public records exemption for records of the Division of Economic Development of the Florida Department of Commerce which contained information concerning the plans of a corporation to locate, relocate, or expand any of its business activities in this state.¹⁸ Since enacting the exemption, the Legislature has made several substantive and technical revisions while retaining the basic concept of affording confidentiality for records of an economic development agency. The last significant modification was in 2007, when a new category of business information was added and specific provisions of a related public-records exemption, s. 288.1067, F.S. (2006), were merged into s. 288.075, F.S., to create 5 distinct categories of exemptions related to the administration of economic development.¹⁹ Currently, the 5 categories of information held by economic development agencies that are exempt from public records are:

Exempted Material	Timeframe
Plans, intentions, or interests of a private company, person or individual considering locating, relocating, or expanding its business operations in Florida ²⁰	Confidential and exempt 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 May be extended for up to an additional 12 months upon written request from the private company or individual upon a finding by the economic development agency that the entity is still actively seeking to locate, relocate, or expand in Florida
Trade secrets ²¹	Permanent
Proprietary confidential business information ²²	Confidential and exempt until such time as the information becomes otherwise publically available or is no longer treated by the proprietor as confidential
Federal employer identification number, unemployment compensation account number, or Florida sales tax registration number ²³	Permanent
Specific sales, employee wage, and tax information related to the administration of state economic development incentives ²⁴	Exempt for a period not to exceed the duration of the incentive agreement or upon termination of the incentive agreement

¹⁸ Adapted from Senate Interim Project Report 2006-205, *Open Government Sunset Review of s. 288.075, F.S., Economic Development Agencies*. Available at: http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-205cm.pdf. Site last visited Oct. 25, 2011.

¹⁹ Chapter 2007-203, L.O.F. This law also repealed s. 288.1067, F.S. See also *Review of Public Records Exemptions Relating to Economic Development Agencies*, The Florida Senate Committee on Commerce, Interim Project Report 2007-103 (October 2006), available at http://archive.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-103cm.pdf (last visited 7/26/2011); and *House of Representatives Staff Analysis Bill #: HB 7201, Government Efficiency and Accountability Council* (April 23, 2007), available at <http://archive.flsenate.gov/data/session/2007/House/bills/analysis/pdf/h7201.GEAC.pdf> (last visited 7/26/2011).

²⁰ Section 288.075(2), F.S.

²¹ Section 288.075(3), F.S.

²² Section 288.075(4), F.S.

²³ Section 288.075(5), F.S.

²⁴ Section 288.075(6), F.S.

The public records exempted by s. 288.075, F.S., are maintained by an “economic development agency,” which is defined in s. 288.075(1)(a), F.S., to include:

1. The Department of Economic Opportunity;²⁵
2. Any industrial development authority created in accordance with part III of ch. 159, F.S., or by special law;
3. Space Florida created in part II of ch. 331, F.S.;²⁶
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 ch. 159, F.S.; 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.²⁷

Section 288.075(1)(b), F.S., states that “proprietary confidential business information” means²⁸ 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.

Section 288.075(2)(c), F.S., states that 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.

This section prevents public officers or employees from using confidential information to their personal benefit.

Section 288.075(7), F.S., states that 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.

Commission on Open Government Reform

The Commission on Open Government Reform was created by Executive Order 07-107 to review, evaluate, and issue recommendations regarding Florida’s public records and public meetings laws. The commission’s final report was issued in January 2009 and contained the following recommendations with respect to s. 288.075, F.S.:

²⁵ Previously the Office of Tourism, Trade, and Economic Development (OTTED) within the Executive Office of the Governor was listed as an economic development agency. However, ch. 2011-142, L.O.F., abolished OTTED and amended s. 288.075, F.S. See s. 148, ch. 2011-142, L.O.F. The Division of Strategic Business Development is the division within the Department of Economic Opportunity that is responsible for many of OTTED’s functions and responsibilities.

²⁶ Space Florida is an Independent Special District of the State of Florida, created by part II of ch. 331, F.S., for the purposes of fostering the growth and development of a sustainable and world-leading space industry in Florida. See Space Florida’s website, available at <http://www.spaceflorida.gov/> (last visited 7/26/2011).

²⁷ This refers to entities such as Enterprise Florida, Inc., and public private partnerships that work with local governments, also known as economic development organization.

²⁸ This definition was created in 2007 by ch. 2007-203, L.O.F., as part of the recommendations of Interim Project Report 2007-103 (October 2006).

1. The Legislature amend s. 288.075, F.S., to include a definition of “economic development project” and to subject the exemption to review and reenactment under the Open Government Sunset Review Act.
2. The Florida Economic Development Council coordinate with the Office of Open Government to provide training to local government economic development agencies on the scope and application of s. 288.075, F.S.²⁹

Florida Economic Development Council states that its purpose is to educate, advocate and connect the state wide network of economic developers through communications and events, providing leadership and vision to advance economic development professionals and economic development throughout the state of Florida as a whole.³⁰

“The Office of Open Government is charged with providing both the Executive Office of the Governor and each of Florida’s agencies with the guidance and tools to serve Florida with integrity and transparency.”³¹ The Office of Open Government was created by Governor Crist³² and reestablished by Governor Scott.³³

Findings and/or Conclusions

Methodology

A telephone survey was conducted regarding the exemption that included contacting state and local economic development agencies, the First Amendment Foundation, the Department of Economic Opportunity, Enterprise Florida, Inc. (EFI), and Space Florida. Responses were compiled and analyzed in the development of recommendations. There were a total of 75 entities contacted with 48 responding.

Findings

All of the 48 entities who responded to staff indicated that they supported reenacting the statute. The Governor’s Office may be developing legislation to name the Governor and EFI as economic development agencies within s. 288.075, F.S., to “clarify any confusion that may exist regarding their roles in the economic development process.”

While not related to the specific exemption under s. 288.075, F.S., some economic development organizations expressed concerns about whether the organizations were considered to be “state agencies” for purposes of the Public Records Act and Sunshine Law. There has been some debate as to the nature of these organizations.³⁴ These organizations may be developing draft legislation to clarify this issue, such as the creation of a bright line test.

Sunset Review Questions

The Open Government Sunset Review Act prescribes questions to be considered by the Legislature in deciding whether to save a public records exemption from its scheduled repeal. These questions address the content and general purpose of the exemption, and detail the specific documents and entities that are affected.

²⁹ *Reforming Florida’s Open Government Laws in the 21st Century*, The Commission on Open Government Reform, p. 20 (January 2009), on file with the Senate Commerce and Tourism Committee.

³⁰ Florida Economic Development Council, available at <http://www.fedc.net/join-fedc/purpose> (last visited 8/1/11).

³¹ The Office of the 45th Governor of Florida, Rick Scott, Office of Open Government, available at http://www.flgov.com/open_government/ (last visited 8/4/11).

³² Fla. Exec. Order No. 07-01, (January 2, 2007).

³³ Fla. Exec. Order No. 11-03, (January 4, 2011).

³⁴ See Inf. Op. to The Honorable Don Gaetz and The Honorable Marti Coley dated December 17, 2009, available at <http://www.myfloridalegal.com/ago.nsf/Opinions/9FCB14946923BD198525768F00686F5A> (last visited 8/2/11); and see Inf. Op. to Mr. Derek P. Rooney Dated June 8, 2011, available at <http://www.myfloridalegal.com/ago.nsf/Opinions/9BF33427865CA616852578B1005568A4> (last visited 8/2/11).

Whom does the exemption uniquely affect, as opposed to the general public?

The exemption affects businesses that are considering locating or expanding in Florida. Maintaining the confidentiality of the five categories of information encourages them to communicate with economic development agencies without concerns that confidential business information will be available to their competitors.

What specific records or meetings are affected by the exemption?

Records affected by this exemption are those held by an economic development agency relating to:

- Plans, Intentions, and Interests of a private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state.
- Trade Secrets.
- Proprietary Confidential Business Information meaning information that is owned or controlled by the corporation, partnership, or person requesting confidentiality under this statute; 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.
- Identification, Account, and Registration Numbers meaning a federal employer identification number, unemployment compensation account number, or Florida sales tax registration number.
- Economic Incentive Programs.

Can the information contained in the records be readily obtained by alternative means?

The information contained in the exempt records is not publicly available, and cannot be otherwise obtained unless directly from the business.

Is the record protected by another exemption and would it be appropriate to merge the exemptions?

The broad range of records protected by this exemption is not protected elsewhere in statute. Trade secrets are protected under s. 812.081, F.S., and s. 688.002, F.S., however these sections of law do not specifically deal with public records exemptions and records held by an economic development agency, and it is not recommended that these sections of law be merged as this would only lead to confusion as to the status of trade secrets as it relates to economic development.

What is the identifiable public purpose or goal of the exemption?

The goal of this exemption is to facilitate communications between businesses and economic development agencies. The exemption allows businesses to keep strategic information confidential while considering sites to locate or expand, the release of which may adversely affect them in the marketplace.

Conclusion

As discussed above, the Open Government Sunset Review Act requires that a public records exemption must serve an identifiable public purpose in order to be maintained. The exemption provided in s. 288.075, F.S., serves a public purpose in two ways. First, the exemption allows state and local economic development agencies to effectively and efficiently administer their programs. The goal of these agencies is to promote growth and attract businesses to Florida. Most state and local economic development agencies surveyed indicated that without the exemption, businesses would be less likely to communicate with them, and therefore possibly less likely to locate or expand in Florida. Second, this exemption affects confidential business information, the disclosure of which could adversely affect the business in the marketplace. Competitors could use this information to their advantage, reacting to business plans that would otherwise be confidential absent inquiries with a government entity. In cases

where businesses are considering relocation, it could cause disruption in the workforce, encouraging current employees to seek other employment.

Options and/or Recommendations

Options

The Committee may consider the recommendations of the Commission on Open Government Reform in its deliberation of this matter.

The following language could be added to s. 288.075(6)(c), F.S., to clarify that an economic development agency must comply with other provisions of law relating to reporting requirements, examples of which would include:

- The annual state incentives report prepared by EFI is in s. 288. 907, F.S.
- The reporting by EDOs to the applicable county or city that gave it public dollars for economic development activities about how the EDOs spent the money in s. 125.045(4), F.S., and s. 166.021(9)(d), F.S.
- The annual reporting by all counties and certain cities (with annual revenues or expenditures greater \$250,000) on local incentives in excess of \$25,000 is specified in s. 125.045(5), F.S., and s. 166.021(9)(e), F.S.

“An economic development agency shall comply with all applicable reporting requirement outlined in Florida Statutes and may publish statistics in the aggregate and classified so as to prevent the identification of a single qualified applicant.”

Recommendations

Committee staff recommends that the public records exemption provided in s. 288.075, F.S., relating to certain business records held by economic development agencies, be re-enacted. Through the review of the public records exemption, it has been determined that the exemption serves a public purpose, as it is necessary to carry out a government program and protects confidential business information.