

Administration (NASA), the Export-Import Bank, the International Trade Administration of the United States Department of Commerce, the Foreign Credit Insurance Association, Enterprise Florida, Inc., and other public and private programs and organizations, domestic and foreign;

- Establish contacts among public and private organizations in industry, both foreign and domestic, which provide information, technical assistance, and financial support to the aerospace industry;
- Compile and disseminate information on financing opportunities and techniques of financing in the aerospace industry and on sources of aerospace and space-related financing;
- Organize, host, and participate in forums regarding space-related financing;
- Insure, coinsure, lend, and guarantee loans, and to originate for sale direct space-related loans, pursuant to criteria, bylaws, policies, and procedures adopted by the board;
- Capitalize, underwrite, and secure funding for aerospace infrastructure, satellites, launch vehicles, and any service which supports aerospace launches;
- Construct, lease, or sell aerospace infrastructure, satellites, launch vehicles, and related services and activities;
- Acquire and dispose of property; and
- Make and exercise any and all contracts necessary to exercise its powers.

Section 331.409(1), F.S., allows the corporation to charge fees to help defray its operating expenses.

The corporation utilizes a variety of financial tools to serve its customers. Specifically, the corporation participates in the following activities:

Direct Loans and Loan Guarantees. Current law authorizes the corporation to make direct loans to and to guarantee the loans of Florida's space-related firms. However, neither a direct loan nor a loan guarantee can exceed 90 percent of the cost of a transaction. The total amount of loans, loan guarantees, and other instruments cannot be more than five times the balance of the corporation's account.

Loan Facilitations. The corporation's financial professionals design programs to help the aerospace industry finance a variety of projects, including infrastructure, manufacturing, assembly, and launch-investment. The corporation provides clients with support and assistance through the entire loan process.

Export Loans. Many client projects, such as launch satellites, are federally classified as exports. As a result, the corporation has a memorandum of understanding with the Florida Export Finance Corporation (FEFC). The FEFC has become an active part of the corporation's financing team, and the many services of the FEFC are also available to the corporation's clients. In addition, the corporation has a strong working relationship with the Export-Import Bank of the United States to provide loan guarantees and direct loans for the export of U.S.-manufactured vehicles and satellites.

Synthetic Leases and Lease Backs. A synthetic lease is an instrument that gives a lessee of mortgaged property certain benefits of ownership, such as depreciation for income tax purposes, while allowing the company to keep the property off its financial statements.

The corporation's governing board consists of seven voting members and two non-voting members (s. 331.411, F.S.). Voting members include a representative appointed by each of the following entities: the board of supervisors of Spaceport Florida; the board of directors of the Florida Export Finance Corporation; the director of the Office of Tourism, Trade, and Economic Development; the board of directors of Enterprise Florida, Inc.; and the Secretary of the Department of Transportation. The Governor appoints two additional voting members. Non-voting members include a member of the Senate selected by the President of the Senate and a member of the House of Representatives selected by the Speaker of the House of Representatives.

The corporation and its business clients have expressed concerns regarding the applicability of existing confidentiality laws to trade secrets, proprietary information, and other sensitive information that is considered by corporation's governing board.

Public Records Requirements

The State Constitution, the Public Records Law and case law specify the conditions under which public access must be provided to governmental records. Under these provisions, public records are open for inspection and copying unless they are made exempt by the Legislature according to the process and standards required in the State Constitution.

Article I, s. 24 (c) of the State Constitution authorizes the Legislature to provide exemptions from the public access provisions of the law and constitution by general law. Any law that creates an exemption must state with specificity the public necessity that justifies the exemption. An exemption may be no broader than necessary to comport with the stated public necessity. Further, a law that creates a public record exemption can relate only to exemptions and their enforcement. In other words, a law that creates a public records exemption may not include other substantive issues.

The Open Government Sunset Review Act of 1995 provides for the systematic repeal of exemptions to the Public Records Law and Public Meetings Law five years after the creation of, or substantial modification to, an exemption. The repeal cycle began in 2001. The 1995 act also specifies the conditions under which a public records or public meetings exemption may be created (ss. 119.15 and 286.0111, F.S.)

By law, an exemption may be created or expanded only if 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 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. (See s. 119.15(4)(b), F.S.)

Thus, under the statute, an exemption may be created or amended only if the Legislature determines that there is a public necessity justifying the exemption and the exemption is no broader than necessary. Additionally, any law creating or amending an exemption must specifically state why the exemption is a public necessity.

III. Effect of Proposed Changes:

This CS implements several provisions that are intended to strengthen the corporation's confidentiality protections.

The CS clarifies that records of the corporation are subject to the protections afforded under s. 288.075, F.S., which provides for the confidentiality of certain records maintained by economic development agencies. Specifically, s. 288.075, F.S., states that upon written request, records of an economic development agency which contain or would provide information concerning plans, intentions, or interests of a private corporation, partnership, or person to locate, relocate, or expand any of its business activities in this state are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for 24 months after the date an economic development agency receives a request for confidentiality. An economic development agency may extend the period of confidentiality for an additional 12 months upon written request from the entity who originally requested confidentiality and upon a finding by the economic development agency that such entity is still actively considering locating, relocating, or expanding its business activities in this state. Trade secrets contained in the records of an economic development agency relating to the plans, intentions, or interests of an entity who has requested confidentiality are confidential and exempt from public record requirements for 10 years after the date an economic development agency receives a request for confidentiality.

In addition, the CS also provides that the confidentiality requirements of s. 331.326, F.S., which establishes a public records exemption for certain records maintained by the Florida Space Authority, also apply to the corporation. This section provides that any information held by the Authority which is a trade secret are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution and may not be disclosed. Similarly, any meeting or portion of a meeting of the Authority's board of supervisors are exempt from the public meeting provisions of s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution when the board is discussing trade secrets. Any public record generated during the closed portions of such meetings, such as minutes, tape recordings, and notes, are confidential and exempt from public records requirements.

The CS also provides that meetings of the corporation's board of directors are exempt from the requirements of s. 286.011, F.S., and s. 24(b), Art. 1 of the State Constitution when the board is discussing specified information, including: methods of manufacture or production, potential trade secrets, potentially patentable material, actual trade secrets, actual patented material, proprietary information, business transactions, financial and proprietary information, and agreements or proposals to receive funding. Public records generated during closed meetings of the board are confidential and exempt from public records requirements to the extent provided

for in ss. 288.075, and 331.326, F.S. The extent to which the CS complies with the requirement that a public records exemption should be no broader than necessary is uncertain.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This CS creates a new public records exemption for the Florida Commercial Space Finance Corporation. Section 24(c), Art. 1 of the State Constitution provides public records exemptions must be enacted by a two-thirds vote of each house.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 119.15, F.S., provides that public records exemptions are to be repealed at the end of 5 years and must be reviewed by the Legislature before the scheduled date of repeal. The current version of this committee substitute has no such review process.

VII. Related Issues:

None.

VIII. Amendments:

None.