

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7115      PCB GVOPS 12-15      OGSR/Economic Development Agencies

**SPONSOR(S):** State Affairs Committee, Government Operations Subcommittee, Patronis

**TIED BILLS:**                    **IDEN./SIM. BILLS:** CS/SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	15 Y, 0 N	Williamson	Williamson
1) State Affairs Committee	15 Y, 0 N, As CS	Williamson	Hamby

### 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 public record exemptions for certain information held by economic development agencies. The following information is confidential and exempt from public record requirements:

- Upon written request, information relating to a business's plans, intentions, and interests to locate, relocate, or expand its business activities in Florida.
- Trade secrets.
- Proprietary confidential business information.
- A federal employer identification number, unemployment compensation account number, or Florida sales tax registration number.
- Certain information pertaining to economic incentive programs.

The bill reenacts the public record exemptions, which will repeal on October 2, 2012, if this bill does not become law. It modifies the exemptions for plans, intentions, and interests, and for economic incentive programs, to provide for earlier release of confidential and exempt information when certain requirements are met.

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 Act<sup>1</sup> 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.<sup>2</sup> 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 created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Public Record Exemptions under Review

Since 1977, there has been a public record exemption for records that contain information concerning the plans of a business to locate, relocate, or expand any of its business activities in Florida. The exemption has undergone several revisions over the years. The last significant modification was in 2007, which merged specific provisions of a related public record exemption regarding economic incentive programs with the public record exemption for the plans, intentions, and interests of a business to locate to Florida.<sup>4</sup>

Currently, upon written request, certain business records are confidential and exempt<sup>5</sup> from public record requirements when held by an economic development agency.<sup>6</sup> Specifically, business plans,

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. 1 of the State Constitution

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

<sup>4</sup> Chapter 2007-203, L.O.F.; codified as s. 288.075, F.S.

<sup>5</sup> 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).

<sup>6</sup> Section 288.075(1)(a), F.S., defines "economic development agency to mean the Department of Economic Opportunity; 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 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; any research and

intentions, and interests to locate, relocate, or expand business activities 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 its consideration to locate, relocate, or expand its activities in Florida.<sup>7</sup> A public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information related to plans, intentions, or interests until 90 days after the information is made public unless:

- The public officer or employee is acting in an official capacity;
- The agreement does not accrue to the personal benefit of such public officer or employee; and
- In the professional judgment of the officer or employee, the agreement is necessary to effectuate an economic development project.<sup>8</sup>

This provision is to prevent a public officer or employee from using confidential information to his or her personal benefit.

Current law also provides a public record exemption for the following information held by an economic development agency:

- Trade secrets.<sup>9,10</sup>
- Proprietary confidential business information,<sup>11</sup> until such information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information.<sup>12</sup>
- A federal employer identification number, unemployment compensation account number, or Florida sales tax registration number.<sup>13</sup>

Current law also provides that 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 public record requirements:

- The percentage of the business's sales occurring outside Florida and, for businesses applying under s. 288.1045, F.S., 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.
- The anticipated wages for the project jobs that the business plans to create, as reported on the application for certification.
- 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.
- The amount of 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

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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.

<sup>7</sup> Section 288.075(2), F.S.

<sup>8</sup> Section 288.075(2)(c), F.S.

<sup>9</sup> Section 288.075(3), F.S.

<sup>10</sup> Section 288.075(1)(c), F.S., provides that the term "trade secret" has the same meaning as defined in the Uniform Trade Secrets Act (*see s. 688.002, F.S.*)

<sup>11</sup> Section 288.075(1)(b), F.S., defines "proprietary confidential business information" to mean 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:

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

<sup>12</sup> Section 288.075(4), F.S.

<sup>13</sup> Section 288.075(5), F.S.

paid pursuant to chapter 199, F.S.; insurance premium taxes paid pursuant to chapter 624, F.S.; excise taxes paid on documents pursuant to chapter 201, F.S.; ad valorem taxes paid; or state communications services taxes paid pursuant to chapter 202, F.S.<sup>14</sup>

The exemption may not exceed the duration of the incentive agreement, including an agreement authorizing a tax refund or tax credit, or upon termination of the incentive agreement.

An economic development agency may release names of qualified businesses; the total number of jobs each business expects to create; the total number of jobs created by each business; and the amount of tax refunds, tax credits, or incentives awarded to and claimed by each business.<sup>15</sup> In addition, an economic development agency may publish statistics in the aggregate and classified so as to prevent the identification of a single qualified applicant.<sup>16</sup>

Any person who is an employee of an economic development agency and who violates any of the public record exemptions commits a second degree misdemeanor punishable as provided in ss. 775.082 and 775.083, F.S.<sup>17</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.<sup>18</sup>

### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemptions for economic development agencies.

The bill clarifies that the public record exemption for plans, intentions, and interests only applies if a written request is provided prior to an economic incentive agreement being signed. It also provides that the information is no longer confidential and exempt at the earlier of 180 days after a final project order for an economic incentive agreement is issued, until a date specified in the final order, 12 months after a request for confidentiality is received or 24 months if an additional 12-month extension is requested, or until the information is publically disclosed.

With regards to the public record exemption for economic incentive programs, the bill removes the public record exemption for anticipated wages for the project jobs that the business plans to create, and the average wage actually paid by the business for those jobs created by the project. An economic development agency may disclose in the annual incentive report the aggregate amount of each tax identified and paid by all businesses participating in each economic incentive program.

The bill provides that the following information relating to a specific business participating in an economic incentive program is no longer confidential and exempt 180 days after the final project order for an economic incentive agreement is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first:

- The name of the qualified business.
- The total number of jobs the business committed to create or retain.
- The total number of jobs created or retained by the business.
- The amount of tax refunds, tax credits, or incentives awarded to, claimed by, or, if applicable, refunded to the state by the business.
- The anticipated total annual wages of employees the business committed to hire or retain.

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<sup>14</sup> Section 288.075(6)(a), F.S.

<sup>15</sup> Section 288.075(6)(b)1., F.S.

<sup>16</sup> Section 288.075(6)(c), F.S.

<sup>17</sup> Section 288.075(7), F.S.

<sup>18</sup> Section 288.075(8), F.S.

**B. SECTION DIRECTORY:**

Section 1 amends s. 288.075, F.S., to reenact the public record exemptions for economic development agencies.

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:

See FISCAL COMMENTS.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill could create a minimal fiscal impact on economic development agencies, because staff responsible for complying with public record requests could require training related to the changes in the public record exemption. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the agency.

**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**

On February 16, 2012, the State Affairs Committee adopted an amendment and reported the bill favorably with committee substitute. The amendment clarifies that the requirement to release certain information 180 days after a final project order is issued or on a specified date in the final project order does not extend beyond the 12-month or 24-month period of confidentiality provided in current law.

The analysis is drafted to the committee substitute as passed by the State Affairs Committee.