

**STORAGE NAME:** h1903.rpp  
**DATE:** March 27, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
Real Property & Probate  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 1903 (PCB RPP 97-01)

**RELATING TO:** Public Records

**SPONSOR(S):** Committee on Real Property & Probate and Representative Crow

**STATUTE(S) AFFECTED:** Section 498.047, Florida Statutes

**COMPANION BILL(S):** SB 652

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

(1) Real Property & Probate YEAS 6 NAYS 0

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**I. SUMMARY:**

The PCB provides an exemption from public records requirements for information relative to an investigation by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business & Professional Regulation pursuant to Chapter 498, Florida Statutes.

The stated purpose of the PCB is to preserve the integrity of the investigation process and to prevent trade secrets from being revealed.

The exemption created by the PCB will sunset on October 2, 2002, unless reenacted by the legislature.

The PCB provides an effective date of October 1, 1997

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Article 1, section 24, of the Florida Constitution provides that 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 except with respect to records exempted. The legislature may create such an exemption provided the general law enacted states with specificity the public necessity for justifying the exemption and is no broader than necessary to accomplish the stated goal. Chapter 119, Florida Statutes, relates to the public records laws.

According to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business & Professional Regulation, a 1993 revision to ch. 498, F.S., has resulted in the division investigating a significant number of criminal practices regarding land sales. Currently these investigation files are open to the public. According to the division, this makes a prosecution based upon a division investigation more difficult. Furthermore, it also makes complainants less willing to come forward with information relating to an investigation.

B. EFFECT OF PROPOSED CHANGES:

This PCB will create a public records exemption for information relative to an investigation by the Division of Florida Land Sales, Condominiums, and Mobile Homes pursuant to Chapter 498, Florida Statutes.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1**

This section of the PCB adds subsection (6) to s. 498.047, F.S., to create an exemption to the public records requirements of s. 119.07(1), F.S., for information relative to an investigation by the division. The exemption keeps the information relative to the investigation confidential until 10 days after the division files a notice to show cause, or, in a case in which no notice to show cause is filed, until the investigation is completed or ceases to be active.

The section defines "active" as where the division or other organization is "proceeding with reasonable dispatch and has a reasonable good-faith belief that the investigation may lead to the filing of an administrative, civil, or criminal proceeding, or to the denial or conditional grant of a license, registration, or permit."

The PCB permits discretionary disclosures by the division regarding the existence or status of an investigation when a complainant makes a specific inquiry about the registration status of a registered or unregistered subdivider.

This section permits disclosure of information that is required by law to be filed with the division, even where the information relates to an active investigation, if such information would ordinarily be subject to section 119.07, Florida Statutes.

This section of the PCB extends the duration of the exemption beyond 10 days after a notice to show cause has been filed, or, where an investigation is no longer active, when disclosure of the exempted information would jeopardize another active investigation; reveal certain information relating to a consumer complainant; or reveal a trade secret as defined in section 688.002, Florida Statutes.

This section permits the division to disclose information to law enforcement, administrative agencies, or regulatory organizations, who seek information in connection with their official duties.

The section also provides discretion to presiding officers in administrative hearings to prevent disclosure of information offered as evidence that would be confidential pursuant to certain provisions of the PCB.

## **Section 2**

This section provides legislative findings relating to the necessity of the exemption. Primarily, the legislature finds the exemptions are necessary to preserve the integrity of investigations and to preserve trade secrets.

## **Section 3**

This section provides an effective date of October 1, 1997.

### **III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

#### **A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. Non-recurring Effects:

None

2. Recurring Effects:

It is possible that the division will incur litigation expenses relating to the invocation of the disclosure exemption created by the PCB.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

Expected to be minimal.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

None.

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2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

One of the stated purposes of the PCB is to protect against the public disclosure of trade secrets.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

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V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee adopted a technical amendment.

VII. SIGNATURES:

COMMITTEE ON Real Property & Probate:

Prepared by:

Legislative Research Director:

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Kurt Bauerle

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