

**STORAGE NAME:** h1903s1z.rpp  
**DATE:** May 27, 1998

**CARRIED OVER\*\*\*\*FINAL ACTION\*\***  
**\*\*SEE FINAL ACTION STATUS SECTION\*\***

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
REAL PROPERTY & PROBATE  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

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

**RELATING TO:** Public Records

**SPONSOR(S):** Committees on Governmental Operations and Real Property & Probate and Representative Crow

**COMPANION BILL(S):** SB 806

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

- (1) REAL PROPERTY & PROBATE YEAS 6 NAYS 0
- (2) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0

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**I. FINAL ACTION STATUS:**

On March 17, 1998 CS/HB 1903 passed the House. YEAS 113 NAYS 0. On April 17, 1998 the Senate substituted CS/HB 1903 for SB 806 and passed CS/HB 1903. YEAS 36 NAYS 0. The bill was presented to the Governor on April 28, 1998, and became law without the Governor's signature on May 14, 1998. See 98-54, Laws of Florida.

**II. FINAL ACTION STATUS:**

Pursuant to House Rule 96, HB 1903 was carried over to the 1998 Session in the House Committee on Governmental Operations. HB 1903's former Senate companion, CS/SB 652, died on the Senate calendar.

**III. SUMMARY:**

This committee substitute creates a public records exemption for information relative to an investigation by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business & Professional Regulation conducted pursuant to Chapter 498, Florida Statutes. This exemption includes consumer complaints. Such information is confidential and exempt until 10 days after a notice to show cause has been filed by the division, or, in the case where no notice to show cause is filed, the investigation is completed or ceases to be active; however, certain information remains confidential and exempt, for example, information that would jeopardize the integrity of another active investigation and trade secret information.

The stated purpose of this bill is to preserve the integrity of the investigation process. Furthermore, untimely disclosure of certain identifying and location information relating to purchasers or account holders or complainants could jeopardize the integrity of investigations.

This committee substitute provides an effective date of October 1 of the year enacted. The exemption created by this bill is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2003, unless reenacted by the Legislature.

This committee substitute does not appear to have a fiscal impact on state or local governments.

IV. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Public Records Law**

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

(a) Every person has the right to inspect or copy any public records 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.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

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 a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption may be created 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. 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.

### **The Florida Uniform Land Sales Practices Law**

The Florida Uniform Land Sales Practices Law ("Law") was intended by the Legislature to provide safeguards regulating the disposition of any interest in subdivided lands, including financial operations entered into by companies and persons regulated by the Law, to prevent fraudulent and misleading methods and unsound financing techniques which could detrimentally affect not only remote land purchasers, but also the land sales industry, the public, and the state's economic well-being, s. 498.003(3), F.S.

The Law, originally enacted in 1963, has been amended regularly to keep up with changes in the industry since the land boom which precipitated its enactment. In 1993, the Legislature amended s. 498.022, Florida Statutes. As part of the statutory language prohibiting fraud in the land sales industry, this legislation extended jurisdiction over fraudulent acts to persons who are otherwise exempt from the registration requirements under Chapter 498, F.S. According to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business & Professional Regulation, as a direct result of the 1993 amendment, the division has seen an increase in criminal referrals to law enforcement and state prosecutors. See 1998 Department of Business and Professional Regulation Legislative Proposal, Uniform Land Sales Practices Act, Jim Mullins, Chief Land Sales Registration.

Under the division's statutory authority, it has at its disposal civil sanctions in the form of injunctive relief and monetary penalties. Also, the division can seek criminal sanctions through referrals to state prosecutors and law enforcement. In its relationships with law enforcement, the division seeks to provide detailed and comprehensive intelligence without alerting the alleged wrongdoers prior to the filing of charges. 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. *Id.*

#### **B. EFFECT OF PROPOSED CHANGES:**

This committee substitute creates a public records exemption for information relative to an investigation by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business & Professional Regulation conducted pursuant to Chapter 498, Florida Statutes. This exemption includes consumer complaints. Such information is confidential and exempt until 10 days after a notice to show cause has been filed by the division, or, in the case where no notice to show cause is filed, the investigation is completed or ceases to be active. "Active" is defined. The division may disclose the existence and the status of an active investigation in response to a specific inquiry about the registration status of a registered or unregistered subdivider. Furthermore, this bill expressly provides that the exemption does not prohibit the disclosure of information which is required by law to be filed with the division and which, but for the investigation, would otherwise be open to the public.

Information remains confidential and exempt, even after the filing of a notice to show cause or the investigation is completed or ceases to be active, which would

1. Jeopardize the integrity of another active investigation.
2. Reveal the name, address, telephone number, social security number, or any other identifying number or information of any purchaser or account holder, or social security number or any account number of a complainant.
3. Reveal a trade secret as defined in s. 688.002, F.S.

This committee substitute permits disclosure of exempt information to law enforcement agencies, administrative agencies, and regulatory organizations, who seek information in connection with their official duties. These receiving entities must maintain the confidentiality of such information. Furthermore, if the confidential and exempt information described above in the previous paragraph is offered in evidence in any administrative, civil, or criminal proceeding, the presiding officer may, in his or her discretion, prevent the disclosure of such information.

This committee substitute provides an effective date of October 1 of the year enacted. The exemption created by this bill is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2003, unless reenacted by the Legislature.

**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:

An agency or program is not eliminated or reduced.

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

N/A

- (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?

This bill makes certain records exempt from public disclosure that are otherwise currently available to the public.

5. Family Empowerment:

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

This bill does not purport 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

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- 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:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

Amends s. 498.047.

**E. SECTION-BY-SECTION RESEARCH:**

Section 1-- Amends s. 498.047, F.S.; creates a public records exemption for information relative to an investigation by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business & Professional Regulation; such information remains confidential and exempt 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; defines "active"; 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; 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 s. 119.07, F.S.; extends 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 exempt information would jeopardize another active investigation; reveal certain information relating to a purchaser, account holder, or complainant; or reveal a trade secret as defined in s. 688.002, F.S.; permits disclosure of exempt information to law enforcement agencies, administrative agencies, and regulatory organizations, who seek information in connection with their official duties and they must maintain the confidentiality of such information; and, provides discretion to presiding officers in administrative, civil, or criminal proceedings to prevent disclosure of information offered as evidence that would be confidential pursuant to certain provisions of the bill.

Section 2-- Provides a public necessity statement for the exemption described in section 1 above.

Section 3--Provides an effective date of October 1, of the year enacted.

V. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

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 this bill is to protect against public disclosure of trade secrets.

D. FISCAL COMMENTS:

None

VI. 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.

VII. COMMENTS:

None

VIII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

IX. SIGNATURES:

COMMITTEE ON Real Property & Probate:  
Prepared by:

Legislative Research Director:

Kurt Bauerle

P.K. Jameson

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**CARRIED OVER RESEARCH PREPARED BY COMMITTEE ON GOVERNMENTAL OPERATIONS:**

Prepared by:

Legislative Research Director:

J. Marleen Ahearn, Ph.D., J.D.

Jimmy O. Helms

**FINAL RESEARCH PREPARED BY COMMITTEE ON REAL PROPERTY & PROBATE:**

Prepared by:

Legislative Research Director:

P.K. Jameson

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