

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1039 (PCB SA 03-13) Public Records Exemption/Investigative Information/Land Sales  
**SPONSOR(S):** State Administration and Mack  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1446

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

---

**SUMMARY ANALYSIS**

The Open Government Sunset Review Act of 1995 in essence requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2<sup>nd</sup> of the fifth year after enactment.

This bill reenacts with editorial and conforming changes the public records exemption for investigative information, including any consumer complaint, held by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, which will repeal on October 2, 2003, if this bill does not become law.

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

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** pcb13a.sa.doc  
**DATE:** February 28, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

The Florida Uniform Land Sales Practices Law (“Law”), provides that it is the intent of 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.<sup>1</sup>

As a result, current law allows the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) of the Department of Business and Professional Regulation to make any necessary investigations to determine whether a person has violated chapter 490, F.S., which governs land sales practices, or has violated any division rule or order.

Current law provides that investigative information, including any consumer complaint, held by the division is confidential and exempt<sup>2</sup> from public disclosure.<sup>3</sup> 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.

The exemption provides that a consumer complaint and other investigative information must remain confidential and exempt, even after the filing of a notice to show cause or the investigation is completed or ceases to be active, if disclosure would:

- Jeopardize the integrity of another active investigation;
- 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; or

---

<sup>1</sup> Section 498.003(3), F.S.

<sup>2</sup> There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

<sup>3</sup> Section 498.047(8), F.S.

- Reveal a trade secret.

The division may release the confidential and exempt information to any law enforcement or administrative agency or regulatory organization. The receiving agency or organization must maintain the confidential and exempt status of the information received. If the confidential and exempt information 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.

Current law provides for future review and repeal of the public records exemption for investigative information held by the division. Pursuant to the Open Government Sunset Review Act of 1995 (Act), s. 498.047(8), F.S., will repeal on October 2, 2003, unless otherwise reenacted by the Legislature. Pursuant to the Act, the House Committee on State Administration sent an Open Government Sunset Review Questionnaire to the Department of Business and Professional Regulation regarding the public records exemption.

### **Effect of Bill**

As a result of the questionnaire response, this bill reenacts with editorial and conforming changes the public records exemption under review. This bill also removes the sentence that requires the repeal of the exemption.

#### **C. SECTION DIRECTORY:**

Section 1. Amends s. 498.047(8), by reenacting with editorial and conforming changes the public records exemption for investigative information held by the division.

Section 2. Provides an effective date for the bill of October 1, 2003.

## **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:**

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Open Government Sunset Review Act of 1995**

The Open Government Sunset Review Act of 1995,<sup>4</sup> 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: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. 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, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

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 is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. 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 (*e.g.*, allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.

---

<sup>4</sup> Section 119.15, F.S.