

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1446

SPONSOR: Regulated Industries Committee

SUBJECT: Public Records

DATE: March 28, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Imhof	Imhof	RI	Favorable
2.	Rhea	Wilson	GO	Favorable
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill is the result of an Open Government Sunset Review performed by the Committee on Regulated Industries during the interim. The exemption will repeal on October 2, 2003, unless the Legislature abrogates the repeal.

This bill amends and reenacts the provisions of s. 498.047(8), F.S., that make information concerning an investigation into land sales practices by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation confidential and exempt from the public records law, s. 119.07(1), F.S., and Art. I, s. 24(a), of the State Constitution. The bill specifies that release to certain governmental entities is permitted when a request is made in connection with its official duties and it removes the repeal of the exemption scheduled under the Open Government Sunset Review Act of 1995, s. 119.15, F.S.

This bill amends section 498.047, Florida Statutes.

II. Present Situation:

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, establishes a review and repeal process for exemptions to public records and meetings laws. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of five years. Further, a law that enacts or substantially amends an exemption must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd of the fifth year, unless the Legislature acts to reenact the exemption.

Under the requirements of s. 119.15(2), F.S., an exemption is to be maintained only if:

- (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

As part of the review process, s. 119.15(4)(a), F.S., requires the consideration of the following specific questions:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

In addition, under the s. 119.15(4)(b), F.S., 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. An identifiable public purpose is served if the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which 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; 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.

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.

The public records exemption for information pertaining to an investigation into land sales practices by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation, as set forth in s. 498.047(8), F.S., is scheduled for repeal on October 2, 2003, unless reviewed and reenacted by the Legislature, pursuant to the criteria specified in the Open Government Sunset Review Act, s. 119.15, F.S.

Chapter 498, F.S., is the “Florida Uniform Land Sales Practices Law.” In enacting the law, the Legislature recognized in s. 498.003(2), F.S., that:

[t]he severe impact upon the land sales industry and upon the economic and political climate of the state of false, misleading, and fraudulent methods in the disposition of any interest in subdivided lands, and the probable detrimental effects of default by companies and persons engaged in the disposition of any interest in subdivided lands, create a danger to the economic well-being of the people of the State of Florida.

Section 498.003(3), F.S., provides that the Land Sales Practices Law was enacted to provide safeguards regulating the disposition of any interest in subdivided lands, and 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.

The law sets forth unlawful and fraudulent acts (s. 498.022, F.S.) and both civil and criminal penalties for committing those acts (ss. 498.022, 498.007, 498.049, and 498.059, F.S.). The law designates the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation (the division) to regulate land sales practices (s. 498.007, F.S.) and authorizes it to conduct investigations (s. 498.047, F.S.).

According to the division, complaints typically allege fraud or misrepresentation as to the ability to develop the property. In some cases, the representations relate to the condition of the property itself, i.e., the infamous swamp land sales. In others, the representations relate to the suitability of the property for development when in fact such development is prohibited by environmental or other regulations.

The Legislature enacted s. 498.047(8), F.S., making information concerning an investigation of land sales practices confidential (ch. 98-54, L.O.F). The general exemption is set forth in paragraph (a) of this subsection and provides that, except as otherwise provided by this subsection, information relative to an investigation by the division pursuant to the Land Sales Practices Law, including any consumer complaint, is confidential and exempt from s. 119.07(1), F.S. and Art. I, s. 24(a), of the State Constitution.

The information remains confidential and exempt from public records law until 10 days after a notice to show cause has been filed by the division, or, in the case in which no notice to show cause is filed, the investigation is completed or ceases to be active. For purposes of this section, an investigation is considered “active” so long as the division or any law enforcement or administrative agency or regulatory 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 or registration.

However, in response to a specific inquiry about the registration status of a registered or unregistered sub-divider, the division may disclose the existence and the status of an active investigation. This subsection is not to be construed to prohibit disclosure of information which

is required by law to be filed with the division and which, but for the investigation, would be subject to s. 119.07(1), F.S.

Section 498.047(8)(b), F.S., provides that except as necessary for the division to enforce the provisions of the Land Sales Practices Law, a consumer complaint and other information relative to an investigation remains confidential and exempt from s. 119.07(1), F.S. and Art. I, s. 24(a), of the State Constitution, after the filing of a notice to show cause or the investigation is completed or ceases to be active to the extent disclosure 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; or
3. Reveal a trade secret as defined in s. 688.002, F.S.

Under s. 498.047(8)(c), F.S., nothing in the subsection is to be construed to prohibit the division from providing information to any law enforcement or administrative agency or regulatory organization. Any law enforcement or administrative agency or regulatory organization receiving confidential information in connection with its official duties must maintain the confidentiality of the information provided under this subsection.

Paragraph (d) of section 468.047(8), F.S., provides that if the information that is subject to this exemption is offered in evidence in any administrative, civil, or criminal proceeding, the presiding officer may, in his or her discretion, prevent the disclosure of information which would be confidential as set forth in paragraph (b).

III. Effect of Proposed Changes:

This bill amends and reenacts the exemption from s. 119.07, F.S., and Article I, s. 24(a), of the State Constitution and provides for the confidentiality for information relating to investigations conducted and held by the Division of Florida Land Sales, Condominiums, and Mobile Homes, Department of Business and Professional Regulation pursuant to s. 498.047(8), F.S. The bill specifies that release to certain governmental entities is permitted when a request is made in connection with its official duties and it removes the repeal of the exemption scheduled under the Open Government Sunset Review Act of 1995, s. 119.15, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
