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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 73.0155, F.S.; revising a public records exemption for business records submitted in eminent domain negotiations on business damages; providing for confidentiality; prescribing the information that is confidential and exempt from disclosure; prescribing certain conditions for the confidentiality and exemption; providing for limitations on the confidentiality and exemption; providing for access by employees of an agency; providing a penalty for disclosure; specifying that the information may be offered in evidence; providing for future legislative review and repeal; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 73.0155, Florida Statutes, is amended to read:

73.0155 Confidentiality; business information ~~records~~ provided to a governmental condemning authority.--

(1) The following business information ~~records~~ provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under ~~pursuant to~~ s. 73.015 is confidential and ~~are~~ exempt from ~~the disclosure provisions of~~ s. 24(a), Art. I of the State Constitution and s. 119.07(1) ~~if the disclosure of such records would be likely to cause substantial harm to the competitive position of the person~~

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30 ~~providing such records and if the owner person providing such~~
 31 ~~records~~ requests in writing that the information such records be
 32 held exempt:-

33 (a) Federal tax returns or tax information confidential
 34 under 26 U.S.C. s. 6103.

35 (b) State tax returns or tax information confidential
 36 under s. 213.053.

37 (c) Balance sheets, profit-and-loss statements, cash-flow
 38 statements, inventory records, or customer lists or number of
 39 customers for a business operating on the parcel to be acquired.

40 (d) A franchise, distributorship, or lease agreement of
 41 which the business operating on the parcel to be acquired is the
 42 subject.

43 (e) Materials that relate to methods of manufacture or
 44 production, potential trade secrets, patentable material, or
 45 actual trade secrets as defined in s. 688.002.

46 (f) Other sensitive or proprietary information related to
 47 the business operating on the parcel to be acquired, if the
 48 owner attests in writing to the governmental condemning
 49 authority that:

50 1. The information is being relied upon to substantiate a
 51 claim for business damages under s. 73.015;

52 2. The information has not otherwise been publicly
 53 disclosed;

54 3. The information cannot be readily obtained by the
 55 public using alternative means;

56 4. The information is used by the business to protect or
 57 further a business advantage over those who do not know or use
 58 the information; and

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59 5. The disclosure of the information would injure the
60 business in the marketplace. ~~Nothing in this section shall be~~
61 ~~construed to prevent inspection of such records by the Attorney~~
62 ~~General, members of the Legislature, and interested state~~
63 ~~agencies; however, such records shall remain exempt from further~~
64 ~~disclosure.~~

65 (2) At the time that any information made confidential and
66 exempt from disclosure under subsection (1) is legally available
67 or subject to public disclosure for any reason, that information
68 is no longer confidential and exempt and shall be made available
69 for inspection and copying.

70 (3) An agency as defined in s. 119.011 may inspect and
71 copy records or information made confidential and exempt from
72 disclosure under subsection (1) exclusively for the transaction
73 of official business by, or on behalf of, an agency. An agency
74 receiving this confidential and exempt information must maintain
75 the confidentiality of that information. Any employee or agent
76 of the agency receiving this confidential and exempt information
77 who willfully and knowingly violates this subsection commits a
78 misdemeanor of the first degree, punishable as provided by s.
79 775.082 or s. 775.083.

80 (4) This section does not prevent an agency from offering
81 information made confidential and exempt from disclosure under
82 subsection (1) as evidence in a legal proceeding and does not
83 prevent a court from determining whether to close a portion of a
84 court record from subsequent public disclosure after trial in
85 order to maintain the confidentiality of that information.

86 (5) Subsection (1) ~~This exemption~~ is subject to the Open
87 Government Sunset Review Act in accordance with s. 119.15 and

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88 expires on October 2, 2009 ~~2004~~, unless reviewed and reenacted
 89 by the Legislature.

90 Section 2. (1) The Legislature finds that it is a public
 91 necessity to make confidential and exempt from public disclosure
 92 sensitive business information that is submitted to a
 93 governmental condemning authority by a business owner to
 94 substantiate an offer to settle a business-damage claim
 95 resulting from the acquisition of a parcel for right-of-way
 96 purposes through eminent domain. Specifically, the Legislature
 97 finds that this confidentiality and exemption from public
 98 disclosure are necessary for federal and state tax returns and
 99 tax information; balance sheets, profit-and-loss statements,
 100 cash-flow statements, inventory records, and customer lists or
 101 number of customers for a business operating on the parcel;
 102 franchise, distributorship, and lease agreements relating to a
 103 business operating on the parcel; information in the nature of
 104 trade secrets; and other sensitive or proprietary business
 105 information, because the business uses this information to
 106 protect or further an advantage over other businesses and
 107 disclosure of the information would injure the business in the
 108 marketplace, and because the governmental condemning authority
 109 uses this information to evaluate the merits of a business-
 110 damage claim and reluctance on the part of a business to provide
 111 this information would significantly impair the ability of the
 112 authority to conduct eminent domain activities.

113 (2) Federal and state tax returns and tax information;
 114 balance sheets, profit-and-loss statements, cash-flow
 115 statements, inventory records, and customer lists or number of
 116 customers for a business; franchise, distributorship, and lease

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117 agreements relating to a business; information in the nature of
 118 trade secrets; and other sensitive or proprietary business
 119 information are typically kept confidential by a business and
 120 are not readily obtainable by the public through alternative
 121 means. This information relates directly to the operations of
 122 the business and reflects upon, and provides insights into, the
 123 financial status, operating techniques and activities, and
 124 strategic plans of the business. Competitors of the business,
 125 who would not ordinarily have access to this sensitive business
 126 information, could use it to undermine the position that the
 127 business maintains in the marketplace by adjusting their own
 128 operating techniques and activities and strategic plans in
 129 response to what they learn about the business. But for the
 130 acquisition by a governmental condemning authority of property
 131 on which the business operates and the requirement that the
 132 business submit an offer to settle a business-damage claim, the
 133 business would not ordinarily be in the position of having to
 134 release this information into a public forum. The
 135 confidentiality and exemption from public disclosure provided by
 136 this act, therefore, protect information of a confidential
 137 nature concerning an entity and are necessary to prevent the
 138 business from being unfairly injured in the marketplace.

139 (3) Federal and state tax returns and tax information;
 140 balance sheets, profit-and-loss statements, cash-flow
 141 statements, inventory records, and customer lists or number of
 142 customers for a business; franchise, distributorship, and lease
 143 agreements relating to a business; information in the nature of
 144 trade secrets; and other sensitive or proprietary business
 145 information are critical to the evaluation of a claim for

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146 business damages resulting from the acquisition of a parcel by a
147 governmental condemning authority. The authority uses the
148 information to determine how the taking of a portion of the
149 property on which a business operates will affect the business
150 from a financial standpoint, to evaluate whether the amount that
151 the business is claiming is accurate in relation to the actual
152 business damages, and, ultimately, to determine how much to
153 compensate the business for its damages. Without the
154 information, a condemning authority would not be able to assess
155 the accuracy of the business-damage offer the business submits
156 and would have to approximate damages using nonspecific
157 information, such as industry trends or averages. An inability
158 to obtain accurate and specific information about the business
159 creates the potential for the authority to pay a greater amount
160 than the actual damages or for the authority to undervalue the
161 claim and reject the business's offer. The exchange of accurate
162 information promotes good-faith negotiations between the
163 business and the governmental condemning authority early in the
164 property-acquisition process and, thereby, promotes
165 opportunities for the parties to reach a settlement on the
166 amount of damages without having to proceed to a full trial,
167 which would likely entail greater costs associated with the
168 acquisition of property for public transportation projects.
169 Because, for the reasons cited in subsection (2), a business is
170 reluctant to share this sensitive business information, the
171 confidentiality and exemption from public disclosure provided by
172 this act encourage businesses to release the information,
173 promote settlements early in the condemnation process and before

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174 | trial, and allow governmental condemning authorities to
175 | effectively and efficiently administer eminent domain programs.

176 | Section 3. This act shall take effect upon becoming a law.