

By the Committee on Commerce, Economic Opportunities, and Consumer Services

310-781A-04

1 A bill to be entitled
 2 An act relating to a review under the Open
 3 Government Sunset Review Act; amending s.
 4 73.0155, F.S.; revising a public-records
 5 exemption for business records submitted in
 6 eminent domain negotiations on business
 7 damages; providing for confidentiality;
 8 prescribing the information that is
 9 confidential and exempt from disclosure;
 10 prescribing certain conditions for the
 11 confidentiality and exemption; providing for
 12 limitations on the confidentiality and
 13 exemption; providing for access by public
 14 employees; providing a penalty for disclosure;
 15 providing for future legislative review and
 16 repeal; providing a statement of public
 17 necessity; providing an effective date.

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

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

23 73.0155 Confidentiality; business information ~~records~~
 24 provided to a governmental condemning authority.--

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

1 ~~competitive position of the person providing such records and~~
2 ~~if the owner person providing such records requests in writing~~
3 ~~that the information such records be held exempt:-~~

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

6 (b) State tax returns or tax information confidential
7 under s. 213.053.

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

12 (d) A franchise, distributorship, or lease agreement
13 of which the business operating on the parcel to be acquired
14 is the subject.

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

18 (f) Other sensitive or proprietary information related
19 to the business operating on the parcel to be acquired, if the
20 owner attests in writing to the governmental condemning
21 authority that:

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

24 2. The information has not otherwise been publicly
25 disclosed;

26 3. The information cannot be readily obtained by the
27 public using alternative means;

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

31

1 5. The disclosure of the information would injure the
2 business in the marketplace.~~Nothing in this section shall be~~
3 ~~construed to prevent inspection of such records by the~~
4 ~~Attorney General, members of the Legislature, and interested~~
5 ~~state agencies; however, such records shall remain exempt from~~
6 ~~further disclosure.~~

7 (2) At the time that any information made confidential
8 and exempt from disclosure under subsection (1) is legally
9 available or subject to public disclosure for any reason, that
10 information is no longer confidential and exempt and shall be
11 made available for inspection and copying.

12 (3) Public employees shall be permitted to inspect and
13 copy records or information made confidential and exempt from
14 disclosure under subsection (1) exclusively for the
15 performance of their public duties. Public employees receiving
16 this confidential and exempt information must maintain the
17 confidentiality of the information. Any such public employee
18 receiving confidential information who violates this
19 subsection commits a misdemeanor of the first degree,
20 punishable as provided by s. 775.082 or s. 775.083.

21 (4) Subsection (1)~~This exemption~~ is subject to the
22 Open Government Sunset Review Act in accordance with s. 119.15
23 and expires on October 2, 2009 ~~2004~~, unless reviewed and
24 reenacted by the Legislature.

25 Section 2. (1) The Legislature finds that it is a
26 public necessity to make confidential and exempt from public
27 disclosure sensitive business information that is submitted to
28 a governmental condemning authority by a business owner to
29 substantiate an offer to settle a business-damage claim
30 resulting from the acquisition of a parcel for right-of-way
31 purposes through eminent domain. Specifically, the Legislature

1 finds that this confidentiality and exemption from public
2 disclosure are necessary for federal and state tax returns and
3 tax information; balance sheets, profit-and-loss statements,
4 cash-flow statements, inventory records, and customer lists or
5 number of customers for a business operating on the parcel;
6 franchise, distributorship, and lease agreements relating to a
7 business operating on the parcel; information in the nature of
8 trade secrets; and other sensitive or proprietary business
9 information, because the business uses this information to
10 protect or further an advantage over other businesses and
11 disclosure of the information would injure the business in the
12 marketplace, and because the governmental condemning authority
13 uses this information to evaluate the merits of a
14 business-damage claim and reluctance on the part of a business
15 to provide this information would significantly impair the
16 ability of the authority to conduct eminent domain activities.

17 (2) Federal and state tax returns and tax information;
18 balance sheets, profit-and-loss statements, cash-flow
19 statements, inventory records, and customer lists or number of
20 customers for a business; franchise, distributorship, and
21 lease agreements relating to a business; information in the
22 nature of trade secrets; and other sensitive or proprietary
23 business information are typically kept confidential by a
24 business and are not readily obtainable by the public through
25 alternative means. This information relates directly to the
26 operations of the business and reflects upon, and provides
27 insights into, the financial status, operating techniques and
28 activities, and strategic plans of the business. Competitors
29 of the business, who would not ordinarily have access to this
30 sensitive business information, could use it to undermine the
31 position that the business maintains in the marketplace by

1 adjusting their own operating techniques and activities and
2 strategic plans in response to what they learn about the
3 business. But for the acquisition by a governmental condemning
4 authority of property on which the business operates and the
5 requirement that the business submit an offer to settle a
6 business-damage claim, the business would not ordinarily be in
7 the position of having to release this information into a
8 public forum. The confidentiality and exemption from public
9 disclosure provided by this act, therefore, protect
10 information of a confidential nature concerning an entity and
11 are necessary to prevent the business from being unfairly
12 injured in the marketplace.

13 (3) Federal and state tax returns and tax information;
14 balance sheets, profit-and-loss statements, cash-flow
15 statements, inventory records, and customer lists or number of
16 customers for a business; franchise, distributorship, and
17 lease agreements relating to a business; information in the
18 nature of trade secrets; and other sensitive or proprietary
19 business information are critical to the evaluation of a claim
20 for business damages resulting from the acquisition of a
21 parcel by a governmental condemning authority. The authority
22 uses the information to determine how the taking of a portion
23 of the property on which a business operates will affect the
24 business from a financial standpoint, to evaluate whether the
25 amount that the business is claiming is accurate in relation
26 to the actual business damages, and, ultimately, to determine
27 how much to compensate the business for its damages. Without
28 the information, a condemning authority would not be able to
29 assess the accuracy of the business-damage offer the business
30 submits and would have to approximate damages using
31 nonspecific information, such as industry trends or averages.

1 An inability to obtain accurate and specific information about
2 the business creates the potential for the authority to pay a
3 greater amount than the actual damages or for the authority to
4 undervalue the claim and reject the business's offer. The
5 exchange of accurate information promotes good-faith
6 negotiations between the business and the governmental
7 condemning authority early in the property-acquisition process
8 and, thereby, promotes opportunities for the parties to reach
9 a settlement on the amount of damages without having to
10 proceed to a full trial, which would likely entail greater
11 costs associated with the acquisition of property for public
12 transportation projects. Because, for the reasons cited in
13 subsection (2), a business is reluctant to share this
14 sensitive business information, the confidentiality and
15 exemption from public disclosure provided by this act
16 encourage businesses to release the information, promote
17 settlements early in the condemnation process and before
18 trial, and allow governmental condemning authorities to
19 effectively and efficiently administer eminent domain
20 programs.

21 Section 3. This act shall take effect July 1, 2004.

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24 SENATE SUMMARY

25 Revises an exemption from the public-records law provided
26 for business information submitted to a governmental
27 condemning authority as part of negotiations concerning
28 business damages. Requires that the business owner make
29 the request for the exemption in writing. Authorizes a
30 public employee to use the confidential information in
31 performing his or her public duties. Provides that the
disclosure of confidential information by a public
employee is a first-degree misdemeanor. Provides for
future legislative review and repeal of the exemption
under the Open Government Sunset Review Act. Provides a
statement of public necessity. (See bill for details.)