

By the Committees on Governmental Oversight and Productivity;  
and Commerce, Economic Opportunities, and Consumer Services

302-1338-04

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 employees of  
14          an agency; providing a penalty for disclosure;  
15          specifying that the information may be offered  
16          in evidence; providing for future legislative  
17          review and repeal; providing a statement of  
18          public necessity; providing an effective date.

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

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

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

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

1 ~~records would be likely to cause substantial harm to the~~  
2 ~~competitive position of the person providing such records and~~  
3 ~~if the owner person providing such records requests in writing~~  
4 ~~that the information such records be held exempt:-~~

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

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

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

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

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

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

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

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

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

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

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) An agency as defined in s. 119.011 may inspect and  
13 copy records or information made confidential and exempt from  
14 disclosure under subsection (1) exclusively for the  
15 transaction of official business by, or on behalf of, an  
16 agency. An agency receiving this confidential and exempt  
17 information must maintain the confidentiality of that  
18 information. Any employee or agent of the agency receiving  
19 this confidential and exempt information who willfully and  
20 knowingly violates this subsection commits a misdemeanor of  
21 the first degree, punishable as provided by s. 775.082 or s.  
22 775.083.

23           (4) This section does not prevent an agency from  
24 offering information made confidential and exempt from  
25 disclosure under subsection (1) as evidence in a legal  
26 proceeding and does not prevent a court from determining  
27 whether to close a portion of a court record from subsequent  
28 public disclosure after trial in order to maintain the  
29 confidentiality of that information.

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

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

3           Section 2. (1) The Legislature finds that it is a  
4 public necessity to make confidential and exempt from public  
5 disclosure sensitive business information that is submitted to  
6 a governmental condemning authority by a business owner to  
7 substantiate an offer to settle a business-damage claim  
8 resulting from the acquisition of a parcel for right-of-way  
9 purposes through eminent domain. Specifically, the Legislature  
10 finds that this confidentiality and exemption from public  
11 disclosure are necessary for federal and state tax returns and  
12 tax information; balance sheets, profit-and-loss statements,  
13 cash-flow statements, inventory records, and customer lists or  
14 number of customers for a business operating on the parcel;  
15 franchise, distributorship, and lease agreements relating to a  
16 business operating on the parcel; information in the nature of  
17 trade secrets; and other sensitive or proprietary business  
18 information, because the business uses this information to  
19 protect or further an advantage over other businesses and  
20 disclosure of the information would injure the business in the  
21 marketplace, and because the governmental condemning authority  
22 uses this information to evaluate the merits of a  
23 business-damage claim and reluctance on the part of a business  
24 to provide this information would significantly impair the  
25 ability of the authority to conduct eminent domain activities.

26           (2) Federal and state tax returns and tax information;  
27 balance sheets, profit-and-loss statements, cash-flow  
28 statements, inventory records, and customer lists or number of  
29 customers for a business; franchise, distributorship, and  
30 lease agreements relating to a business; information in the  
31 nature of trade secrets; and other sensitive or proprietary

1 business information are typically kept confidential by a  
2 business and are not readily obtainable by the public through  
3 alternative means. This information relates directly to the  
4 operations of the business and reflects upon, and provides  
5 insights into, the financial status, operating techniques and  
6 activities, and strategic plans of the business. Competitors  
7 of the business, who would not ordinarily have access to this  
8 sensitive business information, could use it to undermine the  
9 position that the business maintains in the marketplace by  
10 adjusting their own operating techniques and activities and  
11 strategic plans in response to what they learn about the  
12 business. But for the acquisition by a governmental condemning  
13 authority of property on which the business operates and the  
14 requirement that the business submit an offer to settle a  
15 business-damage claim, the business would not ordinarily be in  
16 the position of having to release this information into a  
17 public forum. The confidentiality and exemption from public  
18 disclosure provided by this act, therefore, protect  
19 information of a confidential nature concerning an entity and  
20 are necessary to prevent the business from being unfairly  
21 injured in the marketplace.

22 (3) Federal and state tax returns and tax information;  
23 balance sheets, profit-and-loss statements, cash-flow  
24 statements, inventory records, and customer lists or number of  
25 customers for a business; franchise, distributorship, and  
26 lease agreements relating to a business; information in the  
27 nature of trade secrets; and other sensitive or proprietary  
28 business information are critical to the evaluation of a claim  
29 for business damages resulting from the acquisition of a  
30 parcel by a governmental condemning authority. The authority  
31 uses the information to determine how the taking of a portion

1 of the property on which a business operates will affect the  
2 business from a financial standpoint, to evaluate whether the  
3 amount that the business is claiming is accurate in relation  
4 to the actual business damages, and, ultimately, to determine  
5 how much to compensate the business for its damages. Without  
6 the information, a condemning authority would not be able to  
7 assess the accuracy of the business-damage offer the business  
8 submits and would have to approximate damages using  
9 nonspecific information, such as industry trends or averages.  
10 An inability to obtain accurate and specific information about  
11 the business creates the potential for the authority to pay a  
12 greater amount than the actual damages or for the authority to  
13 undervalue the claim and reject the business's offer. The  
14 exchange of accurate information promotes good-faith  
15 negotiations between the business and the governmental  
16 condemning authority early in the property-acquisition process  
17 and, thereby, promotes opportunities for the parties to reach  
18 a settlement on the amount of damages without having to  
19 proceed to a full trial, which would likely entail greater  
20 costs associated with the acquisition of property for public  
21 transportation projects. Because, for the reasons cited in  
22 subsection (2), a business is reluctant to share this  
23 sensitive business information, the confidentiality and  
24 exemption from public disclosure provided by this act  
25 encourage businesses to release the information, promote  
26 settlements early in the condemnation process and before  
27 trial, and allow governmental condemning authorities to  
28 effectively and efficiently administer eminent domain  
29 programs.

30 Section 3. This act shall take effect October 1, 2004.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
CS/SB 712

Clarifies that agencies may inspect or copy confidential information in order to perform their duties.

Adds an intent standard for violation of the section by requiring a violation to be willful and knowing.

Makes explicit that confidential information may be used in court proceedings and that the court may protect it.