

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1117 Public Records
SPONSOR(S): Greenstein
TIED BILLS: HB 1115 **IDEN./SIM. BILLS:** SB 2076

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>	<u>15 Y, 0 N</u>	<u>Pugh</u>	<u>Miller</u>
2) <u>Governmental Operations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>State Infrastructure Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The South Florida Regional Transportation Authority was created in 2003 to replace the Tri-County Commuter Rail Authority (Tri-Rail) and to develop regional public-transit planning and infrastructure for Miami-Dade, Broward and Palm Beach counties. It is a public agency supported by federal, state, and local tax dollars. Among its powers is the ability to acquire, purchase, and lease real property.

Article I, s. 24, Fla.Const., provides that all records held by a public entity are public records, open to inspection and copying by any person, unless the legislature, by general law, provides that such record is exempt from public disclosure.

HB 1117 proposes keeping confidential the appraisal reports, offers, and counteroffers related to land acquisition by the South Florida Regional Transportation Authority (the authority) until an option contract is executed, or barring that, until 30 days before a purchase or agreement comes before the authority for approval. The bill also allows the authority to disclose, at its discretion, appraisal reports to property owners or to third-parties that are assisting in the land acquisition, who must maintain the confidentiality of the appraisals.

Pursuant to s.119.15, F.S., the confidentiality provisions of HB 1117 are repealed on October 2, 2011, unless reviewed and reenacted by the Legislature prior to that date. HB 1117 does not raise any apparent constitutional or legal issues, nor does it impact state finances.

The bill would take effect on the same date as its tied bill, HB 1115, if adopted in the same legislative session. Because it would create a public records exemption, HB 1117 must be passed by two-thirds of the House members and Senators present and voting.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: HB 1117 delays public access to appraisal reports, offers, and counteroffers related to land purchases by the South Florida Regional Transportation Authority. These documents would become public after an option contract is executed or, no option is executed, then 30 days before the authority votes to acquire the land

B. EFFECT OF PROPOSED CHANGES:

Present Situation

South Florida Regional Transportation Authority

In an attempt to ease the disruptions created for commuters while it was six-laning I-95 in the mid-1980s, FDOT purchased an 81-mile rail corridor from CSXT for \$264 million and began building a commuter train system. Under terms of the sale, CSXT continued to operate its freight trains in the corridor; maintain the tracks, buildings, and signaling; and dispatches all trains using the tracks. In 1989, the Legislature made the temporary commuter rail more permanent, passing the Tri-County Commuter Rail Authority Act as Part 1 of Chapter 343, F.S., and creating a commuter railroad to serve Miami-Dade, Broward and Palm Beach counties.

In 2003, the Legislature passed SB 686, which replaced the "Tri-Rail" authority with the "South Florida Regional Transportation Authority." The new transportation authority is empowered to construct, finance, and manage a variety of mass transit options, not just commuter rail, as an integrated system. It has numerous powers and responsibilities, including the power to acquire, sell, and lease property; to use eminent domain; to enter into purchasing agreements and other contracts; to enforce collection of system rates, fees, and other charges; and to approve revenue bonds issued on its behalf by the State Division of Bond Finance. It has a nine-member board comprised of county commissioners, citizens, and a Florida Department of Transportation district secretary. Currently, it is supported by contributions of local tax revenues from the three member counties, along with federal and state transportation funds to finance its capital projects.

Open Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records is also addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issues of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. And, s. 119.115, F.S., the "Open Government Sunset Review Act of 1995," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It 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:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

- 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
- Protecting trade or business secrets.

Effect of Proposed Changes

HB 1117 would keep confidential the appraisal reports, offers, and counteroffers related to the authority's land acquisitions until an option contract is executed, or barring that, until 30 days before a purchase or agreement comes before the authority for approval. The bill also allows the authority to disclose, at its discretion, appraisal reports to private property owners or to third-parties that are assisting in the land acquisition. The third-parties must maintain the confidentiality of the documents. Additionally, the bill states that in the event that the authority terminates negotiations, the appraisals, offers, and counteroffers become immediately available to the public. Also, the authority may at any time disclose such reports.

These provisions are identical to the public-records exemption for water management districts, in s. 373.139, F.S., and are similar to that of other public land-buying agencies.

Pursuant to s.119.15, F.S., the confidentiality provisions of HB 1117 are repealed on October 2, 2011, unless reviewed and reenacted by the Legislature prior to that date.

HB 1117 also expresses the public necessity of the confidentiality provisions. Disclosure of appraisals and other related documents would "adversely affect the goal of the purchase of lands for public good using public funds at competitive prices," according to the bill. Disclosure also would put the authority at an unfair disadvantage during negotiations, the bill adds. The benefit of acquiring land for a public purpose at competitive prices outweigh any harm to the public from not being able to immediately scrutinize the appraisals and other documents, according to the bill.

The bill would take effect on the same date as its tied bill, HB 1115, if passed during the same legislative session. Because it creates a public-records exemption, HB 1117 requires a two-thirds vote of the members present and voting in both chambers, for passage.

C. SECTION DIRECTORY:

Section 1: Creates s. 343.59, F.S., to keep confidential certain documents related to land acquisitions by the South Florida Regional Transportation Authority until either an option contract to buy the property is executed or until 30 days before the authority approves a contract or purchase agreement. Specifies conditions when the authority may disclose the information earlier. Requires third-parties involved in the acquisition to honor the confidentiality of the documents. Allows the authority use third-party appraisals. Specifies this exemption shall expire October 2, 2011, unless reviewed and reenacted by the Legislature.

Section 2: Specifies public necessity of the public records exemption.

Section 3: Provides that this act shall take effect on the same date as its tied bill, HB 1115, if passed during the same legislative session.

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:

See "D.FISCAL COMMENTS" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The authority believes withholding immediate disclosure of appraisals, offers, and counteroffers from the public will result in lower acquisition costs for land on which future mass transit projects will be built. These savings could be invested in future land acquisitions to further expand or improve the commuter rail and other public-transit facilities within its service area.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES