

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Transportation Committee

BILL: SB 608

INTRODUCER: Senator Geller

SUBJECT: Public Records Exemption

DATE: March 14, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Boyd	Meyer	TR	Pre-meeting
2.			CA	
3.			GO	
4.			TA	
5.			RC	
6.				

I. Summary:

Senate Bill 608 provides a public records exemption to the appraisal reports, offers, and counteroffers related to land acquisition by the South Florida Regional Transportation Authority (SFRTA) until an option contract is executed, or barring that, until 30 days before a purchase or agreement comes before the SFRTA for approval. The bill also allows the SFRTA to disclose, at its discretion, appraisal reports to property owners or to third-parties assisting in the land acquisition, who must maintain the confidentiality of the appraisals. Under s. 119.15, F.S., the confidentiality provisions of SB 608 are repealed on October 2, 2012, unless reviewed and reenacted by the Legislature prior to that date.

This bill creates section 343.59 of the Florida Statutes.

II. Present Situation:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, Floridians adopted an amendment to the state constitution raising the statutory right of access to public records to a constitutional level. Article I, s. 24(a), of the State Constitution provides: Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically

includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law¹ also specifies conditions under which the public must have access to governmental records. Section 119.011(11), F.S., defines the term “public record” to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of the official business by any agency.

The Florida Supreme Court has interpreted this definition of public records to include all materials made or received by an agency in connection with official business which are used “to perpetuate, communicate, or formalize knowledge.”² Unless the Legislature makes these materials exempt, they are open for public inspection, regardless of whether they are in final form.³

Under Article I, s. 24(c), of the State Constitution, the Legislature may provide for the exemption of records from the open government requirements provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

Public records law also recognizes a distinction between records made exempt and records made confidential. If a record is made exempt only, an agency is not prohibited from disclosing the document in all circumstances.⁴ If the Legislature makes certain information confidential and exempt, however, such information may not be released to anyone other than to the persons or entities designated in statute.⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. 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.”⁶

Under s. 119.15(2), F.S., an exemption may 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.”

¹ Chapter 119, F.S.

² *Shevin v. Byron, Harless, Schaffer, Reid, and Assocs., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

³ *See Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

⁴ *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *rev. denied*, 589 So.2d 289 (Fla. 1991).

⁵ *See Inf. Op. to Chiaro*, January 24, 1997.

⁶ Section 119.15(3)(b), F.S.

Section 119.15(4)(a), F.S., requires, as part of the review process, the consideration of the following questions:

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

An exemption may be maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds the purpose is sufficiently compelling to override the strong policy of open government and cannot be accomplished without the exemption:

- The exemption allows “the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption 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.” However, only information identifying the individual is exempted.
- The exemption 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.”

South Florida Regional Transportation Authority

The SFRTA coordinates transit and commuter rail planning in the three participating counties of Miami-Dade, Broward, and Palm Beach. The SFRTA was created in 2003, when the Legislature passed SB 686 which re-established the Tri-County Commuter Rail Authority as the SFRTA to provide a coordinated transportation system within the three counties in order to relieve traffic congestion and move residents and tourists more efficiently throughout the area. In addition, it was believed a single organization would improve the ability to draw down federal matching dollars for public transit, rather than competing for the funds separately.

Although the Tri-Rail commuter rail system remains the authority’s primary focal point, the SFRTA is empowered to construct, finance, and manage a variety of public transportation options as an integrated system. The SFRTA 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.

III. Effect of Proposed Changes:

Section 1 makes confidential the appraisal reports, offers, and counteroffers related to the SFRTA's land acquisitions until an option contract is executed, or barring that, until 30 days before a purchase or agreement comes before the SFRTA for approval. The bill also allows the SFRTA to disclose, at its discretion, appraisal reports to private property owners or to third-parties assisting in the land acquisition. The third-parties must maintain the confidentiality of the documents. Additionally, the bill states that in the event the SFRTA terminates negotiations, the appraisals, offers, and counteroffers become immediately available to the public. Also, the SFRTA 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 those of other public land-buying agencies. Under s. 119.15, F.S., the confidentiality provisions provided by SB 608 are repealed on October 2, 2012, unless reviewed and reenacted by the Legislature prior to that date.

Section 2 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 SFRTA at an unfair disadvantage during negotiations, the bill adds. The benefit of acquiring land for a public purpose at competitive prices outweighs any harm to the public from not being able to immediately scrutinize the appraisals and other documents, according to the bill.

Section 3 provides a conditional effective date. The bill will take effect on the same date as an unidentified Senate Bill, if passed during the same legislative session. Because it creates a public-records exemption, SB 608 requires a two-thirds vote of the members present and voting in both chambers, for passage.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 24, Article I of the State Constitution requires a two-thirds vote of each house of the Legislature for any legislation creating a public records or meeting exemption.

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:

The SFRTA may enjoy lower, but indeterminate acquisition costs for land on which future mass transit projects will be built by withholding immediate disclosure of appraisals, offers, and counteroffers from public inspection.

VI. Technical Deficiencies:

The bill provides a conditional effective date. Section 3 states the bill will take effect on the same date an unidentified Senate Bill, if passed during the same legislative session. Presumably, the unidentified bill is SB 606.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
