

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 961
Authority

Pub. Rec./Land Acquisition by South Florida Regional Transportation

SPONSOR(S): Robaina

TIED BILLS: HB 959

IDEN./SIM. BILLS: SB 608

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|------------------|----------------|----------------|
| 1) <u>Committee on Infrastructure</u> | <u>7 Y, 0 N</u> | <u>Creamer</u> | <u>Miller</u> |
| 2) <u>Economic Expansion & Infrastructure Council</u> | <u>14 Y, 0 N</u> | <u>Creamer</u> | <u>Tinker</u> |
| 3) <u>Policy & Budget 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

In 2003, the South Florida Regional Transportation Authority was created 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.

HB 961 creates a public records exemption for appraisal reports, offers, and counteroffers related to land acquisition by the South Florida Regional Transportation Authority (SFRTA) until execution of an option contract, or barring that, until 30 days before a purchase or agreement comes before SFRTA for approval.

The bill allows SFRTA to disclose, at its discretion, appraisal reports to property owners or to third parties that are assisting in land acquisition.

The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill could have a minimal fiscal impact on SFRTA.

The bill would take effect on the same date as its tied bill, HB 959, if adopted in the same legislative session. Because it would create a public records exemption, HB 961 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 961 authorizes the SFRTA to delay public access to appraisal reports, offers, and counteroffers related to its land purchases. These documents would become public after an option contract is executed or, no option is executed, then 30 days before the SFRTA votes to acquire the land

B. EFFECT OF PROPOSED CHANGES:

South Florida Regional Transportation Authority

Current Situation

In an attempt to ease the disruptions created for commuters while it was six-laning I-95 in the mid-1980s, DOT 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 SFRTA 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.

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.

Proposed Changes

HB 961 would keep confidential the appraisal reports, offers, and counteroffers related to SFRTA's land acquisitions until an option contract is executed, or barring that, until 30 days before a purchase or agreement comes before SFRTA for approval. The bill also allows SFRTA 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, in the event that SFRTA terminates negotiations, the appraisals, offers, and counteroffers become immediately available to the public. Also, 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 that of other public land-buying agencies.

Pursuant to s.119.15, F.S., the confidentiality provisions of HB 959 are repealed on October 2, 2012, unless reviewed and reenacted by the Legislature prior to that date.

HB 961 also expresses the public necessity of the confidentiality provisions. According to the bill:

- 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 SFRTA 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.

The bill would take effect on the same date as its tied bill, HB 959, if passed during the same legislative session. Because it creates a public-records exemption, HB 959 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 SFRTA until either an option contract to buy the property is executed or until 30 days before SFRTA approves a contract or purchase agreement.
- Specifies conditions when SFRTA may disclose the information earlier.
- Requires third-parties involved in the acquisition to honor the confidentiality of the documents.
- Allows SFRTA 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 959, 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:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

The SFRTA 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:

None

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a public necessity statement for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES