

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: February 19, 1998 Revised: 3/20/98 _____

Subject: Public Records/Eminent Domain

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>TR</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill creates a public records exemption for business records provided to a governmental condemning authority by an owner or onsite operator of a business for purposes of establishing business damages in an eminent domain taking. The bill establishes findings of public necessity that the business records be held confidential in order to encourage prelitigation settlements and in order to protect the privacy interest in these sensitive business records.

II. Present Situation:

Open Records

The Florida Constitution requires that all public records be open to inspection. s. 24, Art. 1, Fla. Const. The constitution authorizes the Legislature to provide exemptions from this requirement by general law. However, a law which creates an exemption must state with specificity the public necessity that justifies the exemption and may be no broader than necessary to comport with the public necessity. Additionally, a law that creates an exemption is required to relate only to exemptions and enforcement of public records.

In addition to the constitutional requirements, the Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. Under the Open Government Sunset Review Act of 1995, s. 119.15, F.S., of the Public Records Act, an exemption may be created only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose. s. 119.15(4)(b), F.S. The section provides that an identifiable public purpose is served if the exemption meets one of a list of purposes and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of

open government and cannot be accomplished without the exemption. *Id.* The listed purposes are that the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

Id.

The section also provides for the systematic repeal of public records exemptions 5 years after creation of, or substantial modification to, the exemption. s. 119.15(3)(a), F.S. The repeal cycle begins in 2001. In reviewing the exemptions, the Legislature is to use the same public purpose criteria used in creating an exemption. *Id.*

Eminent Domain Records

Florida law provides a public records inspection exemptions for records acquired by a state executive branch agency seeking to acquire real property by purchase or through the exercise of the power of eminent domain. s. 119.07(n), F.S. The exempt records include “all appraisals, other reports relating to value, offers, and counteroffers.” The exemption is operative until execution of a valid option contract or a written offer to sell that has been conditionally accepted by the agency, at which time the exemption expires. If a valid option contract is not executed, or if a written offer to sell is not conditionally accepted by the agency, then the exemption expired at the conclusion of the condemnation litigation of the subject property. The exemption does not apply to a public record which was made a part of a court file and which is not specifically closed by order of court. *Id.*

There is no reported case law on the question of whether “other reports relating to value” includes business records provided by a business to a condemning authority to be used to establish a value for the business damages owed due to the eminent domain.

III. Effect of Proposed Changes:

The bill establishes an exemption from the public records disclosure requirements of s. 24(a), Art. I, Fla. Const., and s. 119.07(1), F.S. The exemption is for business records provided by the owner or onsite operator of a business to a governmental condemning authority after the governmental condemning authority has tendered a prelitigation offer under s. 77.0511, F.S. The

exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and expires on October 2, 2003, unless reviewed and reenacted by the Legislature.

The bill makes a legislative finding of public necessity that the business records provided to a condemning authority by an owner or onsite operator of a business subsequent to a prelitigation offer in an eminent domain proceeding be held confidential in order to encourage prelitigation settlements. Additionally, the Legislature finds that it would be an invasion of privacy for these sensitive business records to be revealed to the public.

The bill provides a conditional effective date. The bill takes effect only if SB 92 or similar eminent domain legislation becomes law, and takes effect on the effective date of that substantive legislation. (Senate Bill 92 takes effect July 1, 1998.) Senate Bill 92 relates to eminent domain and, as a part of the provisions concerning business damages, provides that the governmental condemning authority may seek to obtain from the owner or onsite operator of the business a copy of the business records kept in the ordinary course of business, if available. The bill provides that if business records are provided to the condemning authority, they must be kept confidential and used only for the purpose of preparing the written offer or in the condemnation suit. This bill enacts the public records exemption necessary to provide that confidentiality pursuant to the constitution.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The Florida Constitution authorizes the Legislature to provide public records exemptions by general law. However, such a law must state with specificity the public necessity that justifies the exemption and may be no broader than necessary to comport with the public necessity. Additionally, it must relate only to exemptions and enforcement of public records.

As the bill relates only to an exemption, states the specific public necessity upon which the exemption is based, and is no broader than necessary to meet that necessity, it meets these requirements.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

In conjunction with Senate Bill 92 or similar eminent domain business damages legislation, the bill may result in more prelitigation settlements and decrease the cost of eminent domain cases involving such damages for all those involved.

C. Government Sector Impact:

In conjunction with Senate Bill 92 or similar eminent domain business damages legislation, the bill may result in more prelitigation settlements and decrease the cost of eminent domain cases involving such damages for all those involved.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Judiciary:

Technical amendment to correct a cross-reference.