

Committee Substitute for
Committee Substitute for Senate Bill No. 712

An act relating to a review under the Open Government Sunset Review Act; amending s. 73.0155, F.S.; revising a public-records exemption for business records submitted in eminent domain negotiations on business damages; providing for confidentiality; prescribing the information that is confidential and exempt from disclosure; prescribing certain conditions for the confidentiality and exemption; providing for limitations on the confidentiality and exemption; providing for access by employees of an agency; providing a penalty for disclosure; specifying that the information may be offered in evidence; providing for future legislative review and repeal; providing a statement of public necessity; providing an effective date.

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

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

73.0155 Confidentiality; business information ~~records~~ provided to a governmental condemning authority.—

(1) ~~The following business information records provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under pursuant to s. 73.015 is confidential and are exempt from the disclosure provisions of s. 24(a), Art. I of the State Constitution and s. 119.07(1) if the disclosure of such records would be likely to cause substantial harm to the competitive position of the person providing such records and if the owner person providing such records requests in writing that the information such records be held exempt:;~~

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

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

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

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

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

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

1. The information is being relied upon to substantiate a claim for business damages under s. 73.015;
2. The information has not otherwise been publicly disclosed;
3. The information cannot be readily obtained by the public using alternative means;
4. The information is used by the business to protect or further a business advantage over those who do not know or use the information; and
5. The disclosure of the information would injure the business in the marketplace. Nothing in this section shall be construed to prevent inspection of such records by the Attorney General, members of the Legislature, and interested state agencies; however, such records shall remain exempt from further disclosure.

(2) At the time that any information made confidential and exempt from disclosure under subsection (1) is legally available or subject to public disclosure for any reason, that information is no longer confidential and exempt and shall be made available for inspection and copying.

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

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

(5) Subsection (1) ~~This exemption~~ is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and expires on October 2, 2009 2004, unless reviewed and reenacted by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity to make confidential and exempt from public disclosure sensitive business information that is submitted to a governmental condemning authority by a business owner to substantiate an offer to settle a business-damage claim resulting from the acquisition of a parcel for right-of-way purposes through eminent domain. Specifically, the Legislature finds that this confidentiality and exemption from public disclosure are necessary for federal and state tax returns and tax information; balance sheets, profit-and-loss statements, cash-flow statements, inventory records, and customer lists or number of customers for a business operating on the parcel; franchise, distributorship, and lease agreements relating to a business operating on the parcel; information in the nature of trade secrets; and other sensitive or proprietary

business information, because the business uses this information to protect or further an advantage over other businesses and disclosure of the information would injure the business in the marketplace, and because the governmental condemning authority uses this information to evaluate the merits of a business-damage claim and reluctance on the part of a business to provide this information would significantly impair the ability of the authority to conduct eminent domain activities.

(2) Federal and state tax returns and tax information; balance sheets, profit-and-loss statements, cash-flow statements, inventory records, and customer lists or number of customers for a business; franchise, distributorship, and lease agreements relating to a business; information in the nature of trade secrets; and other sensitive or proprietary business information are typically kept confidential by a business and are not readily obtainable by the public through alternative means. This information relates directly to the operations of the business and reflects upon, and provides insights into, the financial status, operating techniques and activities, and strategic plans of the business. Competitors of the business, who would not ordinarily have access to this sensitive business information, could use it to undermine the position that the business maintains in the marketplace by adjusting their own operating techniques and activities and strategic plans in response to what they learn about the business. But for the acquisition by a governmental condemning authority of property on which the business operates and the requirement that the business submit an offer to settle a business-damage claim, the business would not ordinarily be in the position of having to release this information into a public forum. The confidentiality and exemption from public disclosure provided by this act, therefore, protect information of a confidential nature concerning an entity and are necessary to prevent the business from being unfairly injured in the marketplace.

(3) Federal and state tax returns and tax information; balance sheets, profit-and-loss statements, cash-flow statements, inventory records, and customer lists or number of customers for a business; franchise, distributorship, and lease agreements relating to a business; information in the nature of trade secrets; and other sensitive or proprietary business information are critical to the evaluation of a claim for business damages resulting from the acquisition of a parcel by a governmental condemning authority. The authority uses the information to determine how the taking of a portion of the property on which a business operates will affect the business from a financial standpoint, to evaluate whether the amount that the business is claiming is accurate in relation to the actual business damages, and, ultimately, to determine how much to compensate the business for its damages. Without the information, a condemning authority would not be able to assess the accuracy of the business-damage offer the business submits and would have to approximate damages using nonspecific information, such as industry trends or averages. An inability to obtain accurate and specific information about the business creates the potential for the authority to pay a greater amount than the actual damages or for the authority to undervalue the claim and reject the business's offer. The exchange of accurate information promotes good-faith negotiations between the business and the governmental condemning authority early in the property-acquisition process and, thereby, promotes opportunities for the parties to reach a settlement on the

amount of damages without having to proceed to a full trial, which would likely entail greater costs associated with the acquisition of property for public transportation projects. Because, for the reasons cited in subsection (2), a business is reluctant to share this sensitive business information, the confidentiality and exemption from public disclosure provided by this act encourage businesses to release the information, promote settlements early in the condemnation process and before trial, and allow governmental condemning authorities to effectively and efficiently administer eminent domain programs.

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

Approved by the Governor May 12, 2004.

Filed in Office Secretary of State May 12, 2004.