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S 696 GENERAL BILL/2ND ENG by Beard (Identical CS/H 1132)

Public Records/Property/State Agency; provides that agencies of executive branch may exempt from public records requirements title information re property which is subject to acquisition by agency; provides for future review & repeal. Amends 119.07. Effective Date: 07/01/89.

03/29/89 SENATE Prefiled

04/07/89 SENATE Introduced, referred to Governmental Operations -SJ 104

04/14/89 SENATE On Committee agenda—Governmental Operations, 04/18/89, 3:45 pm, Room-H-(428); Extension of time granted Committee Governmental Operations

04/18/89 SENATE Comm. Report: Favorable with 1 amendment(s) by Governmental Operations, placed on Calendar -SJ 180

05/02/89 SENATE Placed on Special Order Calendar -SJ 242; Passed as amended; YEAS 36 NAYS 0 -SJ 254

05/09/89 HOUSE In Messages

05/10/89 HOUSE Received, placed on Calendar -HJ 446; Substituted for CS/HB 1132 -HJ 447; Read second time; Amendments adopted; Read third time; Passed as amended; YEAS 114 NAYS 1 -HJ 447

05/11/89 SENATE In Messages

05/18/89 SENATE Concurred; Passed as amended; YEAS 38 NAYS 0 -SJ 392

05/18/89 Ordered engrossed, then enrolled -SJ 392

05/23/89 Signed by Officers and presented to Governor -SJ 448

05/29/89 Approved by Governor; Chapter No. 89-29 -SJ 495

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Kane <i>JKK</i>	Stenle <i>JS</i>	1. GO	Fav/l amend.
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Public Records Exemption;
Title Information, Acquisition
by Eminent Domain

BILL NO. AND SPONSOR:

SB 696 by
Senator Beard

I. SUMMARY:

A. Present Situation:

Article X, s. 6, Fla. Const., provides that the state may take private property only for a public purpose, and that each owner must be paid full compensation. Chapter 73, F.S., provides for authorized entities to exercise the power of eminent domain by petition in circuit court. Pursuant to s. 73.091, F.S., an entity petitioning for the exercise of eminent domain must pay all reasonable costs of the proceedings in circuit court. These include, but are not limited to, a reasonable attorney's fee, reasonable appraisal fees and, when business damages are compensable, a reasonable accountant's fee.

Section 337.271, F.S., 1988 Supp., vests the power of eminent domain in the Department of Transportation for the acquisition of property to be used for the present or future transportation needs of the state. Unlike any other agency or political subdivision, the department is required to negotiate with landowners for the acquisition of property as an alternative to instituting proceedings in circuit court. The department, as well, unlike any other agency or a political subdivision, is required to pay for the attorney's fees, appraiser's fees, and certain accountant's fees when a sale is effected through negotiation and does not proceed to circuit court. According to the department, one purpose of required negotiation is to avoid the costs of litigation when acquiring rights-of-way.

Pursuant to s. 337.241, F.S., 1988 Supp., and related sections, the department is required to acquire all rights-of-way, and may do so under certain conditions well in advance of specific design or construction plans for a particular transportation facility, as long as the property is in an identified transportation corridor. The department may so acquire any such property in conformance with the Florida Transportation Plan. The Plan is prepared for a 5-year period and, pursuant to s. 339.135(5), F.S., 1988 Supp., prior to the annual adoption of the 5-year Transportation Plan, the department must hold a public hearing in at least one urbanized area in each of the transportation districts.

The Bureau of Right of Way of the Division of Preconstruction and Design of the Department of Transportation manages an annual budget of approximately \$150 to \$250 million to acquire rights-of-way. The department estimates that the bureau seeks to acquire some 2,000 parcels per year. These may have multiple ownerships, in addition to mortgages and other encumbrances. The names and addresses of owners and others with an interest in the property must be discovered through the records of the offices of county appraisers, and through title searches, which are time-consuming and costly.

Chapter 119, F.S., the Public Records Law, provides that public records are to be available for inspection and copying by any person at reasonable times and under reasonable conditions, unless specifically exempted by statute. The names and addresses obtained by the department through title searches prior to rights-of-way acquisition are not specifically exempt from the Public Records Law. All appraisals, other reports relating to value, offers, and counteroffers are exempt from the Public Records Law, however, until execution of a valid option contract or a written offer to sell which has been conditionally accepted by the agency. The agency is not allowed to finally accept the offer for a period of 30 days in order to allow public review of the transaction.

According to the department, it is customary for consulting firms and others who would be eligible to receive fees for services as provided by s. 337.271, F.S., 1988 Supp., to request from the department the names and addresses obtained through title searches preliminary to acquisition of rights-of-way. In this way, firms and persons are able to solicit customers for their services prior to the time of notification by the department.

Prior to beginning litigation, or at the inception of the negotiation, property owners must be notified of their rights to reimbursement for reasonable professional services, as well as other statutory rights, as provided in ss. 73.0511, F.S., and 337.271, F.S., 1988 Supp. The reasonable accountant's fee or appraisal fees permitted are the general or customary hourly rates for those fees in the community. The reasonable attorney's fee is to be based on the attorney's time and labor reasonably required, and on other relevant factors. Section 73.092, F.S., provides, however, that "under no circumstances" may the attorney's fee be based solely on a percentage of the award to the property owner. Thus, standard contingency fees are not permitted.

Property owners select their own professionals; the only restriction is that real estate appraisers must be qualified by the Department of Transportation for transactions with the department. Real estate brokers or appraisers are not restricted by law from directly soliciting persons for their services. Section 473.323, F.S., prohibits certified public accountants from direct, in person, uninvited solicitation of a specific potential client. Certified public accountants are thus not prohibited from uninvited solicitation that is not conducted directly or in person. Section 877.02, F.S., and Rule 4-7.3 of the Rules Regulating the Florida Bar, restrict solicitation of legal business by lawyers.

B. Effect of Proposed Changes:

Would provide an exemption to the Public Records Law for title information, including the names and addresses of prospective owners, relating to property sought to be acquired by purchase or by eminent domain by an agency of the executive branch.

The exemption would expire upon the execution of a valid option contract or upon the agency's conditional acceptance of a written offer to sell. An agency would not be permitted to finally accept the offer for a period of 30 days in order to allow public review of the transaction.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The Department of Transportation maintains that solicitors sometimes provide misinformation to property owners whose property will become the subject of eminent domain proceedings, which tends to cause property owners to incur certain non-

reimbursable expenses. Although the department has not explained the nature of the non-reimbursable expenses, the position of the DOT is that if solicitors were not able to contact property owners before the release of official notification by the department, persons whose property is subject to acquisition would be less likely to incur non-reimbursable costs.

B. Government:

The Department of Transportation estimates that the time of one staff person per year for each of the ten districts is expended on providing requested title information to solicitors and in clarifying erroneous information both stated and implied by solicitors to owners of property required for acquisition of rights-of-way projects. At an estimated salary of \$24,000, the department estimates that it would save approximately \$240,000 per year in staff time if the title information were not available at the title-search stage to solicitors.

In addition, the department maintains that negotiations are hampered, and costs to the state increased, when property owners are contacted by solicitors for services prior to contact by the department. The department estimates that if solicitors were not contacting property owners at such an early time, and providing misleading information, more acquisitions would be completed more economically by negotiation, rather than by litigation.

III. COMMENTS:

The wording of the exemption appears to exempt from the public records law all title information relating to the acquisition of rights-of-way, regardless of the location of the information. For example, the record of title in the county records office would become exempt from disclosure to any person whatsoever once the department began work in acquiring the property, a result which is not practical and appears to be beyond the scope of the purpose of the exemption. The department's stated purpose for the exemption is to shield from commercial and professional persons and entities the names and addresses of property owners obtained by the department in its research regarding rights-of-way acquisition. Thus, the wording of the exemption should be narrowed to have that effect. A corrective amendment has been prepared.

In addition, the duration of the exemption continues past the time when the information sought to be shielded may be obtained by other means. Although this is not a required factor for consideration in creating an exemption, it is a factor required to be considered in determining whether to revive an exemption pursuant to s. 119.14, F.S., the Open Government Sunset Review Act.

For example, s. 337.271(2), F.S., 1988 Supp., requires the department to notify owners of certain rights at the inception of negotiation. As well, s. 73.0511, F.S., requires that prior to instituting litigation, a condemning authority must notify property owners of their statutory rights to payment of certain costs. At these stages, the specific owners are identified, and a commercial or professional person or entity could obtain the names and addresses of the affected owners by requesting of the department public inspection of the names and addresses of those to whom the required notice has been sent, which would not be protected from disclosure since they would not be "title information." Since the names and addresses of property owners would be available through records other than those specifically relating to the title information obtained, the exemption would serve little purpose after the time notice of rights is furnished to an affected property owner.

In addition to solicitors for the provision of professional services, property owners would also be unable to obtain from the

department title information for neighboring properties until agreements for sale had been reached.

IV. AMENDMENTS:

#1 by Governmental Operations:
Clarifies that the title information exempted from the Public Records Law is title information obtained by an agency in the process of acquiring property.

SENATE COMMITTEE AMENDMENT

SB 696

No. 1
(reported favorably)

HB _____

The Committee on...Gov. Operations....recommended the following
amendment which was moved by Senator.....and adopted:
and failed:

1 Senate Amendment
2
3 On page2....., lines ...6-8..., strike
4
5 all of said lines
6
7
8
9 If amendment is text from another bill insert:
10 Bill No. _____ Draft No. _____ With Changes? Yes No -
11 and insert:
12 acquisition, obtained by an agency of the executive branch of
13 state government in the course of or preliminary to its
14 acquisition of property by purchase or through exercise of the
15 power of eminent domain is
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CODING: Words stricken are deletions; words underlined are additions.

* Amendment No. 1, taken up by committee: 04/18/89 Adopted x *
* Offered by Senator Gardner Failed - *

(Amendment No. _____ Adopted _____ Failed _____ Date __/__/__)

****AS PASSED BY THE 1989 LEGISLATURE****

STORAGE NAME: h1132-f.go

DATE: June 19, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENTAL OPERATIONS
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 1132 (SB 696 passed)

RELATING TO: Public Record Exemption for Property Title Information

SPONSOR(S): Committee on Governmental Operations and Representative
TroxlerEFFECTIVE DATE: July 1, 1989, or upon becoming law, whichever occurs
later

DATE BECAME LAW: May 29, 1989

CHAPTER #: 89-29, Laws of Florida

COMPANION BILL(S): SB 696 (identical)

OTHER COMMITTEES OF REFERENCE: (1) None

(2)

I. SUMMARY:

A. SHORT SUMMARY:

This bill amends s. 119.07(3)(q), Florida Statutes, 1988 Supplement, so that property title information held by an agency of the executive branch, including the names and addresses of property owners, may remain confidential in the hands of the agency and exempt from the inspection provisions of the public records law along with appraisals, offers, counteroffers, and other reports relating to value. This information is not subject to disclosure until an option contract is signed or until a written offer to sell has been conditionally accepted by the executive agency seeking acquisition of the land. This bill is supported by the Department of Transportation as a means of reducing the number of complaints it receives from property owners who receive solicitations from various professionals when their land is the subject of acquisition.

B. PRESENT SITUATION:

Chapter 119, Florida Statutes, sets out the provisions that govern the handling and storage of public records by record custodians, and the inspection and copying of public records by members of the general public. The policy in the state is expressed in the form of a presumption in chapter 119, Florida Statutes, which provides that all state, county, and municipal records are open to the public for inspection at all times. This means that unless there is a specific statutory exemption

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DATE: June 19, 1989
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preventing disclosure of a certain record, the custodian of the record must permit it to be inspected and examined at any reasonable time and under reasonable conditions.

There are two kinds of exemptions which prevent disclosure of a public record. The first kind of exemption is codified in a section other than those that make up chapter 119, Florida Statutes, and is subject to legislative review every ten years under the Open Government Sunset Review Act. During the review process a legislative committee determines whether the exemption's continued existence is compelled by justifications strong enough to override Florida's strong public policy of open government. These exemptions repeal automatically at the end of the ten years without affirmative reenactment by the Legislature.

The second kind of exemption is codified in s. 119.07(3), Florida Statutes, which is a list of records that are exempt from the inspection provisions of 119.07(1)(a), Florida Statutes. The majority of the exemptions listed in this section are not subject to legislative review or automatic repeal under the Open Government Sunset Review Act, but remain in effect indefinitely.

This bill amends s. 119.07(3)(q), Florida Statutes, 1988 Supplement, which provides a temporary public record exemption for appraisals, offers, and counteroffers held by an executive agency when it is involved in the acquisition of real property by purchase or through eminent domain proceedings. The current exemption provides that all appraisals, offers, counteroffers, and other reports relating to value are exempt from s. 119.01, Florida Statutes, until the execution of an option contract or until a written offer to sell has been conditionally accepted by the agency. Under this section, an agency may not finally accept an offer until 30 days after the execution of the option contract or written offer so that the public may review the transaction.

This bill expands the public record exemption in s. 119.07(3)(q), Florida Statutes, 1988 Supplement, so that title information held by an executive agency involved in the acquisition of property by purchase or through eminent domain may be exempt from inspection by the public to the same extent that appraisals, offers, counteroffers, and other reports relating to value are already exempt under the section. Thus the bill expands the exemption so that an agency may prevent the disclosure of title information only until an option contract or written offer is executed. Though the bill places the exemption in s. 119.07(3), Florida Statutes, it specifies that the exemption is subject to the Open Government Sunset Review Act.

This bill is supported by the Department of Transportation (DOT or department), which regularly acquires property through purchase and eminent domain proceedings as a part its right-of-way program. As explained by DOT, people whose property is the subject of a right-of-way acquisition have complained to the department about mail and in-person solicitations they have received from appraisers, brokers, accountants, and attorneys who inform them that they should not negotiate with DOT without first

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retaining the services of a professional to aid them in their negotiations. The department further explained that the number of complaints has increased since s. 337.271, Florida Statutes, was amended in 1987 to provide for the payment of attorney's fees for prelitigation negotiation (chapter 87-148, Laws of Florida). The department stressed that the temporary exemption of title information from public inspection requirements is not an attempt to prohibit solicitation, but is an attempt to inhibit unnecessary litigation at the state's expense.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 119.07(3)(q), Florida Statutes, 1988 Supplement, so that property title information, which includes the names and addresses of property owners, may be exempt from public records law inspection requirements in the same manner that appraisals, offers, counteroffers, and other reports relating to value are already exempt. Under the current s. 119.07(3)(q), Florida Statutes, 1988 Supplement, appraisals, offers, counter-offers, and other reports relating to value are not subject to disclosure until the execution of an option contract or until a written offer has been conditionally accepted. This bill also specifies that the exemption is subject to legislative review under the Open Government Sunset Review Act.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Amends s. 119.07(3)(q), Florida Statutes, 1988 Supplement, to provide a permissive exemption for property title information, including the names and addresses of property owners, from the inspection provisions of s. 119.01, Florida Statutes. Further amends s. 119.07(3)(q), Florida Statutes, 1988 Supplement, to provide that the public record exemption is subject to the Open Government Sunset Review Act.

Section 2 -- Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

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4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

The department estimates that passage of the bill would result in a reduction in funds spent on prelitigation negotiation settlement because the names and addresses of persons whose property is the subject of acquisition would be temporarily exempt from public record inspection requirements. This in turn would mean the involvement of fewer professional appraisers, brokers, accountants, and attorneys in the negotiation process because most property owners represented by a professional in prelitigation negotiations would be those who desire assistance enough to initiate contact themselves.

III. LONG RANGE CONSEQUENCES:

This bill relates to the following portion(s) of the State Comprehensive Plan:

(20) TRANSPORTATION.--

- (a) Goal.--Florida shall direct future transportation improvements to aid in the management of growth and shall have a state transportation system that integrates

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highway, air, mass transit, and other transportation modes.

(b) Policies.--

14. Acquire advanced rights-of-way for transportation projects in designated transportation corridors consistent with state, regional, and local plans.

IV. COMMENTS:

The Department of Natural Resources expressed concern that the language in the bill could be construed to prevent it from disclosing title information to local governments or nonprofit organizations when it enters into joint acquisition or resale agreements with these entities. It urged that the bill be amended so that only those agencies desiring to retain the confidentiality of title information would be bound to do so. Amendatory language which addressed this concern was added to the bill when it was heard by the Executive Organization Subcommittee.

This bill is consistent with the Governmental Operations Committee's Mission Statement, which directs the Committee to "[i]nitiate ways to achieve better productivity and efficiency by state agencies."

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:



Diane Carr

Staff Director:


Barry Kling

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director: