

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EEG 23-02 OGSR/Water Management District Surplus Lands

SPONSOR(S): Ethics, Elections & Open Government Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee	18 Y, 0 N	Villa	Toliver

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Water Management Districts (WMD) are responsible for the administration of water resources at a regional level. There are five water management districts (WMDs) established within the state: Northwest Florida, South Florida, Southwest Florida, St. Johns River, and Suwanee. The WMDs may acquire real property for water management and conservation purposes. Unlike most state lands, these lands are held and conveyed in the name of the WMD, not the Board of Trustees of the Internal Improvement Trust Fund. A WMD may sell lands its governing board determines to be surplus at any time. These lands must be sold at the highest price obtainable, but not less than the appraised value of the land determined by a certified appraiser within 360 days of the sale.

Current law provides a public record exemption for written valuations of WMD land determined to be surplus, related documents used to form, or which pertain to, the valuation as well as written offers to purchase such surplus land. The exemption expires two weeks before the WMD first considers the contract or agreement regarding the purchase, exchange, or disposal of the surplus land; however, a WMD is authorized to disclose the information to potential purchasers before the expiration of the exemption to facilitate successful or expedited closure of the sale of surplus land in the following circumstances:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2023, if this bill does not become law.

The bill does not appear to have a fiscal impact on state government or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Water Management District Surplus Land

Water Management Districts are responsible for the administration of water resources at a regional level. There are five water management districts (WMDs) established within the state: Northwest Florida, South Florida, Southwest Florida, St. Johns River, and Suwanee.⁵ The WMDs may acquire real property for flood control; water storage; water management; conservation and protection of water resources; aquifer recharge; water resource and water supply development; and preservation of wetlands, streams, and lakes.⁶ Unlike most state lands, these lands are held and conveyed in the name of the WMD, not the Board of Trustees of the Internal Improvement Trust Fund.⁷ The following is a breakdown of the land in acres owned by each WMD:

- Northwest Florida – 210,940.
- South Florida – 828,010.
- Southwest Florida – 341,870.
- St. Johns River – 622,150.

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ Florida Department of Environmental Protection, *Water Management Districts*, <https://floridadep.gov/water-policy/water-policy/content/water-management-districts> (last visited December 2, 2022).

⁶ Section 373.139(2), F.S.

⁷ See Florida Department of Environmental Protection, *FAQ: Disposition of State Lands and Facilities Annual Report*, <https://floridadep.gov/lands/bureau-public-land-administration/content/faq-disposition-state-lands-and-facilities-annual#:~:text=These%20public%20lands%20help%20ensure,of%20non%2Dconservation%20lands>. (last visited December 2, 2022).

- Suwannee River – 159.850.⁸

A WMD may sell lands its governing board determines to be surplus at any time.⁹ For lands acquired for conservation purposes, the governing board must determine that the lands are no longer needed for that purpose and may dispose of them by a two-thirds vote. For all other lands, the governing board must determine that such lands are no longer needed and may dispose of them by majority vote.¹⁰ These lands must be sold at the highest price obtainable, but not less than the appraised value of the land determined by a certified appraiser within 360 days of the sale.¹¹ Such sales must be for cash or upon terms and security approved by the governing board, however, a deed cannot be executed and delivered until full payment is received.¹² The WMD must publish notice of its intent to sell the land on its website and in a newspaper in the county where the land is located once each week for three consecutive weeks.¹³ The first notice of intent must be published at least 30 days, but not more than 360 days, before any sale and must include a description of the land to be sold.¹⁴

Public Record Exemption under Review

In 2018, the Legislature created a public record exemption for written valuations of WMD land determined to be surplus, related documents used to form, or which pertain to, the valuation, as well as written offers to purchase such surplus land.¹⁵ The information is confidential and exempt¹⁶ from public record requirements and expires two weeks before the WMD first considers the contract or agreement regarding the purchase, exchange, or disposal of the surplus land. However, a WMD is authorized to disclose the confidential and exempt information to potential purchasers to facilitate successful or expedited closure of the sale of surplus land in the following circumstances:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.¹⁷

The 2018 public necessity statement¹⁸ for the exemption provides that:

The public availability of such valuations, related documents, and written offers can negatively impact the ability of water management districts to negotiate with potential purchasers and potentially places water management districts at a disadvantage in attempting to maximize the return on the sale of surplus land.¹⁹

⁸ Florida Department of Environmental Protection, *State of Florida Lands and Facilities Inventory Search*, <https://prodenv.dep.state.fl.us/DsIPi/stateLandDashboard.action> (last visited December 2, 2022).

⁹ Section 373.089(1), F.S.

¹⁰ Section 373.089(6), F.S.

¹¹ *Id.*

¹² Section 373.089(2), F.S.

¹³ Section 373.089(3), F.S.

¹⁴ *Id.*

¹⁵ Chapter 2018-158, L.O.F., codified as s. 373.089(1)(b), (c), and (d), F.S.

¹⁶ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *Op. Atty Gen. Fla. 04-09* (2004).

¹⁷ A similar public record exemption exists for written valuations of land owned by the Board of Trustees of the Internal Improvement Trust Fund determined to be surplus and related documents used to form the valuation or that pertain to the valuation. See s. 253.0341(8), F.S.

¹⁸ Article I, s. 24(c), FLA. CONST., requires each public record exemption state with specificity the public necessity justifying the exemption.

¹⁹ Chapter 2018-156, L.O.F.

During the 2022 interim, subcommittee staff sent questionnaires to each WMD as part of its review under the Open Government Sunset Review Act. WMD staff indicated they had not had any issues interpreting or applying the exemption and that they were unaware of the existence of any litigation concerning the exemption. Further, WMD staff indicated they had not received any complaints concerning the exemption. As such, each WMD recommended the exemption be reenacted as is.²⁰

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for written valuations of WMD land determined to be surplus, related documents used to form, or which pertain to, the valuation, as well as written offers to purchase such surplus land.

B. SECTION DIRECTORY:

Section 1 amends s. 373.089, F.S., relating to sale or exchange of lands, or interests or rights in lands.

Section 2 provides an effective date of October 1, 2023.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

²⁰ Open Government Sunset Review Questionnaire, Florida Water Management Districts Sale of Surplus Land, responses on file with the Ethics, Elections & Open Government Subcommittee.

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.