

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 09-09 OGSR Written Valuations of State-Owned Land

SPONSOR(S): Governmental Affairs Policy Committee

TIED BILLS: **IDEN./SIM. BILLS:** SB 1268

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record 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.

Current law establishes the Board of Trustees for the purpose of assuring the proper application of the Internal Improvement Trust Fund and the Land Acquisition Trust Fund. The Board is comprised of four trustees: the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The Trustees have the power to sell, transfer, and otherwise dispose of state-owned land; however, they can do so only by a vote of at least three of the four trustees.

Current law details the method used when determining the value and sale price of surplus lands. The Division of State Lands in the Department of Environmental Protection must consider the appraised value of the property, or if the property is valued at less than \$100,000, must consider a comparable sales analysis or a broker's opinion of value and the price paid by the state to originally acquire the lands.

A written valuation of surplus land and related documents used to form the valuation or that pertain to the valuation are confidential and exempt from the public records requirements. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the Board of Trustees. Additionally, the Division may disclose appraisals, valuations, or valuation information: during negotiations for the sale or exchange of the surplus land; during the marketing effort or bidding process associated with the sale, disposal, or exchange of the surplus land to facilitate closure of such effort or process; 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 reenacts the public record exemption, which will repeal on October 2, 2009, if this bill does not become law. It also reorganizes the section and makes clarifying changes.

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

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.

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:

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

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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Board of Trustees

Current law establishes the Board of Trustees for the purpose of assuring the proper application of the Internal Improvement Trust Fund and the Land Acquisition Trust Fund. The Board is comprised of four trustees: the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

Agriculture. The Trustees have “the power to sell and transfer of said lands to the purchasers and receive the power to sell and transfer said lands to the purchasers and receive payment for the same...”⁴ The Trustees cannot sell, transfer, or otherwise dispose of any lands except by vote of at least three of the four Trustees.⁵

State-Owned Lands

Current law authorizes the Trustees to determine which state-owned lands are surplus.⁶ For conservation lands,⁷ the Trustees must determine that lands are no longer needed for conservation purposes and can dispose of them upon an affirmative vote. For all other lands, the Trustees can determine they are no longer needed by the state and can dispose of them upon an affirmative vote.⁸

Current law details the method used when determining the value and sale price of surplus lands.⁹ The Division of State Lands in the Department of Environmental Protection must consider the appraised value of the property, or if the property is valued at less than \$100,000, must consider a comparable sales analysis or a broker’s opinion of value and the price paid by the state to originally acquire the lands.

The Division is required, within 45 days of noticing that a surplus sale is going to occur, to disclose to any local government that provides a certified resolution indicating they intend to purchase the property, the appraised value of the land.¹⁰ The local government is entitled to purchase the property at appraised value.

Public Record Exemption under Review

Current law provides that a written valuation of surplus land and related documents used to form the valuation or that pertain to the valuation are confidential and exempt¹¹ from the public records requirements.¹² The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the Board of Trustees. Additionally, the Division may disclose appraisals, valuations, or valuation information:

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

⁴ Section 253.02(1), F.S.

⁵ Section 253.02(2)(a), F.S.

⁶ Section 253.034(6), F.S.

⁷ Section 253.034(2)(c), F.S., defines “conservation lands” to mean “lands that are currently managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation, except those lands that were acquired solely to facilitate the acquisition of other conservation lands. Lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation shall not be designated conservation lands except as otherwise authorized under this section. These lands shall include, but not be limited to, the following: correction and detention facilities, military installations and facilities, state office buildings, maintenance yards, state university or state community college campuses, agricultural field stations or offices, tower sites, law enforcement and license facilities, laboratories, hospitals, clinics, and other sites that possess no significant natural or historical resources. However, lands acquired solely to facilitate the acquisition of other conservation lands, and for which the land management plan has not yet been completed or updated, may be evaluated by the Board of Trustees of the Internal Improvement Trust Fund on a case-by-case basis to determine if they will be designated conservation lands.”

⁸ Section 253.034(6), F.S.

⁹ Section 253.034(6)(g), F.S.

¹⁰ Section 253.111(3), F.S.

¹¹ There is a difference between records the Legislature designates as 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. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 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 the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985)

¹² Section 253.034(6)(g)1.a., F.S.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2009, unless reenacted by the Legislature.

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record exemption for a written valuation of surplus land and related documents used to form the valuation or that would pertain to the valuation. It also reorganizes the exemption and makes clarifying changes.

B. SECTION DIRECTORY:

Section 1 amends s. 253.034, F.S., to reenact the public record exemption for a written valuation of surplus land and related documents used to form the valuation or that would pertain to the valuation.

Section 2 provides an effective date of October 1, 2009.

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:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.