

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: PCS/SB 1268 (470846)

INTRODUCER: Governmental Oversight and Accountability Committee, Environmental Preservation and Conservation Committee and Senator Constantine

SUBJECT: OGSR/State-Owned Surplus Lands

DATE: April 13, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kiger</u>	<u>Kiger</u>	<u>EP</u>	Favorable
2.	<u>Naf</u>	<u>Wilson</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill is the result of an Open Government Sunset Review performed by the Committee on Environmental Preservation and Conservation.

Section 253.034(6), F.S., provides a public records exemption for certain documents related to appraisals of state-owned lands being surplusued. This exemption is subject to review under s. 119.15, F.S., the Open Government Sunset Review Act, and will sunset on October 2, 2009, unless saved from repeal through reenactment by the Legislature. This bill reenacts the exemption and makes organizational and clarifying changes.

This bill does not expand the scope of the public records exemption and therefore does not require a two-thirds vote by each house of the Legislature for passage.

This bill amends s. 253.034, F.S.

II. Present Situation:

Florida Public Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.¹ In 1992, Floridians adopted an amendment to the

¹ Sections 1390, 1391, F.S. (Rev. 1892).

State Constitution that raised the statutory right of access to public records to a constitutional level.²

The Public Records Act³ specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency⁴ records are available for public inspection. Section 119.011(12), F.S., defines *public record* very broadly to include “all documents, ... tapes, photographs, films, sound recordings, ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Unless made exempt, all such materials are open for public inspection.⁵

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.⁶ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁷ A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁸

Open Government Sunset Review Act

The Open Government Sunset Review Act⁹ provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁰ An identifiable public purpose is served if the exemption meets one of three specified criteria 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.¹¹ An exemption meets the statutory criteria if it:

- 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 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 the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is

² Art. 1, § 24, Fla. Const.

³ Chapter 119, F.S.

⁴ Section 119.011(2), F.S., defines *agency* as “any state, county, ... or municipal officer, department, ... or other separate unit of government created or established by law ... and any other public or private agency, person, ... acting on behalf of any public agency.”

⁵ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁶ Art. 1, § 24(c), Fla. Const.

⁷ *Id.*

⁸ *Id.*

⁹ Section 119.15, F.S.

¹⁰ Section 119.15(6)(b), F.S.

¹¹ *Id.*

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.¹²

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.¹³

Surplusing of State-Owned Lands and Related Public Records Exemption

Section 253.034, F.S., governs the use, management, and transfer of state-owned lands.

Section 253.034(6), F.S., delineates requirements for the surplusing of lands for which title is vested in the Board of Trustees of the Internal Improvement Trust Fund ("board"). The section states that the board shall determine which of such lands may be surplus and provides requirements for that process.

The section also contains provisions concerning authority for the determination of the value and sale price of surplus lands and concerning the methods to be used for such determination.¹⁴ Section 253.034(6)(g), F.S., states that the Division of State Lands ("division") within the Department of Environmental Protection shall determine the sale price of surplus lands. In doing so, the division must take into consideration an appraisal of the property, or, when the estimated value of the land is less than \$100,000, a comparable sales analysis or a broker's opinion of value.¹⁵

Section 253.034(6)(g), F.S., also contains a public records exemption for certain documents related to the surplus lands value appraisal process.¹⁶ A written valuation of land determined to be surplus and related documents used to form the valuation or which pertain to the valuation are confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution until 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.¹⁷ The section allows the division to disclose such confidential and exempt appraisals, valuations, or valuation information regarding surplus land under 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 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.¹⁸

The Legislature's statement of public necessity for this exemption suggests that the purpose for the exemption is to maximize returns to the state from the sale of surplus lands:

¹² *Id.*

¹³ Section 119.15(6)(a), F.S.

¹⁴ Section 253.034(6)(g), F.S.

¹⁵ *Id.*

¹⁶ Section 253.034(6)(g)(1)a, F.S.

¹⁷ *Id.*

¹⁸ *Id.*

The Legislature finds that temporarily preserving the confidentiality of a written valuation of state-owned land determined by the Board of Trustees of the Internal Improvement Trust Fund to be surplus land under s. 253.034(6), Florida Statutes, and related documents used to form the valuation or which pertain to the valuation, is a public necessity. The Legislature finds that making such written valuation and documents related to the valuation confidential and exempt from public records requirements until 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of surplus land is first considered for approval by the board helps ensure the maximum return to the state from the disposition of surplus lands. The Legislature finds that public access to this information prior to the designated termination of the exemption would impede development of agreements that maximize returns to the state by providing persons interested in buying or trading for surplus land an unfair advantage during the negotiation or bidding processes to sell, exchange, or dispose of the land. The exemption from public records requirements created by this act for information regarding the valuation of state-owned land determined to be surplus will help to ensure that real estate transactions involving such land are conducted “at arm’s length.”¹⁹

The exemption thus appears to have an identifiable public purpose as required by s. 119.15(6)(b)2, F.S. This public purpose is compelling and cannot be accomplished without making the information exempt. Because the exemption is limited in scope and time, it also appears to be no broader than necessary to meet the public purpose it serves.

III. Effect of Proposed Changes:

This bill reenacts and saves from repeal s. 253.034(6), F.S., allowing certain documents related to the appraisals of state-owned lands being surplus to remain exempt from public disclosure. This bill also makes organizational and clarifying changes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill retains an existing public records exemption. This bill complies with the requirement of article I, section 24 of the Florida Constitution that the Legislature address public records exemptions in legislation separate from substantive law changes.

C. Trust Funds Restrictions:

None.

¹⁹ Chapter 2004-35, Laws of Florida.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Since the creation of the exemption, the division has prepared a total of 125 appraisals. In almost all cases, the prospective purchasers have been private parties; therefore, the exemption has been invoked. The division reports that on average, a majority of the surplus land is sold for more than the appraised value. According to the division, repeal of the exemption would make it difficult to sell the surplus property for more than appraised value.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.