

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 Environmental Preservation and Conservation Committee

BILL: SB 1268
 INTRODUCER: Environmental Preservation and Conservation Committee and Senator Constantine
 SUBJECT: Surplus Lands
 DATE: February 27, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kiger	Kiger	EP	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill repeals paragraph (g) of subsection 253.034(6), F.S., which provides for the repeal of a public records exemption concerning documents related to appraisals of state owned lands being surplus.

The bill provides that the act shall take effect October 1, 2009.

This bill substantially amends s. 253.034, F.S.

II. Present Situation:

Surplus of State-Owned Lands

Section 253.034(6), F.S., provides that the Board of Trustees of the Internal Improvement Trust Fund determine which state-owned lands can be surplus. For conservation lands,¹ the Trustees must determine that lands are no longer needed for conservation purposes and can dispose of them with an affirmative vote of three of the four Trustees. For all other lands, the Trustees can determine that they are no longer needed by the state and can dispose of them with an affirmative vote of three of four Trustees.

Section 253.034(6)(g), F.S., contains provisions that detail the method to be used when determining the value and sales price of surplus lands. Responsibility for implementation of

¹ In part, conservation lands 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. (For complete definition see s. 253.034(2)(c), F.S.)

these provisions falls to the Division of State Lands, (division) within the Department of Environmental Protection. The division 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. In determining the value of lands, the statute directs that any written valuation and related documents used to form the valuation or which pertain to the valuation are confidential and exempt from the public records laws.

Embodied within this exemption is a provision that provides for its expiration two weeks before a contract or agreement "regarding purchase, exchange, or disposal of the surplus land is first considered for approval by the board." Additionally, the division also may disclose the confidential and exempt information "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." The division reports that appraisal information is routinely given to applicants in order to assure them that they are getting the right value for their expenditures. However, the information is only given after the transaction has been completed or the Trustees have approved the sale. It is also necessary to disclose the appraisal information when there is an exchange and the applicant is required to make up the difference between the value of the property and the state's property during an exchange.

Pursuant to s. 253.111(3), F.S., 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 that indicates they intend to purchase the property, the appraised value of the land. This is required because the local government is entitled to purchase the property at appraised value.

The Legislature must find a public necessity for the exemption of public records. For this specific exemption the legislation found:

*"...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.'"*²

² Chapter 2004-35 Law of Florida

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.

Open Government Sunset Review Act

Only the Legislature is authorized to create exemptions to open government requirements.³ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption.

There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.

The Open Government Sunset Review Act⁴ provides for the systematic review of exemptions from the Public Records Act or the Public Meetings Law. The Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives, by June 1st of each year, the language and statutory citation of each exemption scheduled for repeal the following year. The cycle for review of an exemption ends on October 2nd of the fifth year following enactment.

An exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. 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. The three statutory criteria are:

- The exemption allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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 their safety; or
- The exemption protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of

³ Article I, s. 24(c) of the State Constitution.

⁴ Section 119.15, F.S.

information that is 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.

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another. The Legislature is only limited in its review process by constitutional requirements.

III. Effect of Proposed Changes:

This bill repeals paragraph (g) of subsection 253.034(6), F.S., which provides for the repeal of a public records exemption concerning documents related to appraisals of state owned lands being surplus.

The bill provides an effective date of October 1, 2009.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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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.