

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 Committee on Environmental Preservation and Conservation

BILL: CS/SB 808

INTRODUCER: Committee on Environmental Preservation and Conservation and Senator Baxley

SUBJECT: Public Records/Surplus Lands

DATE: February 6, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 808 designates the following information as confidential and exempt from the disclosure requirements under the Public Records Act and Art. I, s. 24(a) of the Florida Constitution:

- A written valuation of land determined to be surplus by the governing board of a water management district (WMD);
- Related documents used to form, or which pertain to, such valuation; and
- Written offers to purchase surplus lands.

The bill provides for when the exemption expires, which is two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the WMD. The bill authorizes the WMD to disclose the information to potential purchasers under certain circumstances to facilitate the successful or expedited closure of the sale of surplus lands.

In accordance with the Open Government Sunset Review Act, the exemption automatically repeals on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the primary statutory requirements for executive branch agencies are found in ch. 119, F.S., which is known as the Public Records Act. The Public Records Act states that:

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.³

According to the Public Records Act, every person who has custody of a public record is required to permit that record to be inspected or copied unless that record is exempted by law.⁴ A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁵ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁶ A violation of the Public Records Act may result in civil or criminal penalties.⁷

Public Records Exemptions

By general law, the Legislature may create an exemption to the public records requirements.⁸ An exemption must pass by a two-thirds vote of the House and the Senate.⁹ In addition, an exemption must explicitly state the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Section 119.01(1), F.S.

⁴ *Id.*

⁵ Section 119.011(12), F.S., defines the term “public records” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines the term “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.10, F.S.

⁸ FLA. CONST., art. I, s. 24(c).

⁹ *Id.*

¹⁰ *Id.*

statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹² Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances specifically designated by law. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹³

Valuation of state lands for sale

Pursuant to s. 253.0341(8)(a), F.S., a written valuation of land determined to be surplus by the Board of Trustees of the Internal Improvement Trust Fund (BOT) and related documents used to form the valuation or which pertain to the valuation are confidential and exempt from disclosure.¹⁴ This 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 BOT.¹⁵

The Division of State Lands within the Department of Environmental Protection is authorized to disclose the confidential and exempt appraisals, valuations, or valuation information regarding the surplus land:

- 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.¹⁶

While a public records exemption exists for written valuations of land determined to be surplus by the BOT, a similar exemption does not exist for written valuations of land determined to be surplus by a WMD.

Appraisals and written offers for lands the state is purchasing

There are public records exemptions for appraisals and written offers when the state is seeking to purchase land. When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain all appraisals, other reports relating to value, and written offers and counteroffers are exempt until the execution of a valid option contract or a written offer to sell that has been conditionally accepted by the agency.¹⁷ If the parties do not execute a valid option contract or the agency does not

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹³ *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

¹⁴ Section 253.0341(8)(a), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 119.0711, F.S.

conditionally accept a written offer to sell, then the exemption expires at the conclusion of the condemnation litigation of the subject property.¹⁸

Similarly, when a WMD is seeking to purchase land, all appraisal reports, offers, and counteroffers are exempt until an option contract is executed or if no option contract is executed, until 30 days before a contract of agreement for purchase is considered for approval by the governing board.¹⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁰ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²¹

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²³
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁴ or
- It protects trade or business secrets.²⁵

The OGSR also requires specified questions to be considered during the review process.²⁶ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. If, in reenacting an exemption, the exemption is

¹⁸ *Id.*

¹⁹ Section 373.139, F.S.

²⁰ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(b), F.S.

²³ Section 119.15(6)(b)1., F.S.

²⁴ Section 119.15(6)(b)2., F.S.

²⁵ Section 119.15(6)(b)3., F.S.

²⁶ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁸

III. Effect of Proposed Changes:

CS/SB 808 designates the following information as confidential and exempt from the disclosure requirements under the Public Records Act and Art. I, s. 24(a) of the Florida Constitution:

- A written valuation of land determined to be surplus by the governing board of a water management district (WMD);
- Related documents used to form, or which pertain to, the valuation; and
- Written offers to purchase such surplus lands.

The bill provides that the exemption expires, thus the specified information may be disclosed, two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the WMD.

Additionally, the bill authorizes a WMD, before the expiration of the exemption, to disclose confidential and exempt valuations and valuation information that are related to the surplus lands or written offers to purchase such surplus lands, to potential purchasers in order to facilitate successful or expedited closure of the sale of such lands:

- During the 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.

In accordance with the Open Government Sunset Review Act, the exemption shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

As required by the Florida Constitution, the bill provides a statement of public necessity.²⁹ This statement is based on the following findings:

- The exemption is necessary in order to facilitate successful or expedited closure of the sale of surplus lands; and
- The public availability of such valuations, related documents, and written offers can negatively impact the ability of WMDs to negotiate with potential purchasers and potentially places WMDs at a disadvantage in attempting to maximize the return on the sale of surplus land.

²⁷ FLA. CONST. art. I, s. 24(c).

²⁸ Section 119.15(7), F.S.

²⁹ FLA. CONST. art. I, s. 24(c).

The bill takes effect on the same date that SB 806 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. As the bill creates a new public record exemption, it requires a two-thirds vote for final passage.

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption and includes a public necessity statement.

Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill specifically exempts written valuations of land determined to be surplus, any related documents, and written offers and provides for the expiration of such exemption upon the contract or agreement being approved, at the conclusion of negotiations or marketing efforts, or the passage of a year. Thus, the bill appears to be no broader than necessary to accomplish the public necessity for this public record exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has a negative, indeterminate fiscal impact to the water management districts (WMDs) as they will incur additional costs related to training staff regarding the new public records exemption and redacting the information prior to the release of the record. However, these costs likely can be absorbed as part of the day-to-day responsibilities of the WMD.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.089 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on February 5, 2018:

The Committee Substitute:

- Revises the conditions upon when the exemption expires and when a WMD, at its discretion, is authorized to disclose the exempted information.
- Adds the automatic repeal of the exemption as required by the Open Government Sunset Review Act; and
- Makes conforming changes to the public necessity statement.

- B. **Amendments:**

None.