

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1902

SPONSOR: Governmental Oversight and Productivity Committee and Senator Geller

SUBJECT: Public Facilities

DATE: April 25, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute requires the Board of Trustees of the Internal Improvement Trust Fund (BOT) to sell a state facility under certain circumstances upon the petition of a majority of the private business tenants. The petitioning majority will have a right of first refusal when the public facility is sold.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Pursuant to Article X, s. 11 of the State Constitution, title to state land must be held in trust for all the people. The sale and use of state land may be authorized by law, but only when in the public interest.

In order to implement these constitutional requirements, the Board of Trustees of the Internal Improvement Trust Fund (BOT) was statutorily created to serve as a fiduciary body which holds state land in trust and ensures that the use and disposition of state property is in the public interest.¹ The BOT consists of the following seven trustees: (1) the Governor; (2) the Secretary of State; (3) the Attorney General; (4) the Comptroller; (5) the State Treasurer; (6) the Commissioner of Education; and (7) the Commissioner of Agriculture.² The BOT receives administrative staffing from the Division of State Lands within the Department of Environmental Protection.

¹Section 253.03, F.S.

²Section 253.02, F.S.

The BOT is permitted to authorize state agency use of state lands through leases or similar instruments.³ Pursuant to BOT rule, these agreements must contain terms and restrictions which protect and enhance the state land, and may be canceled if the lessee uses the land for any unauthorized purpose.⁴ Furthermore, a state agency is statutorily proscribed from subleasing any land it leases from the BOT without first obtaining approval from the Division of State Lands.⁵

The BOT is also permitted to sell, transfer, or otherwise dispose of state lands. For conservation lands, at least five of the board's members must approve the proposed disposition, and for all other lands at least four of the board's members must approve.⁶ Prior to the board's decision to sell state land, i.e., "surplus" state land, however, the Acquisition and Restoration Council (ARC) shall determine if the board's request for surplus is compatible with the resource values of and management objectives for such land, and shall make recommendations to the board concerning its request.⁷ Moreover, the BOT may not sell any state land unless they afford the county in which such land is situated an opportunity to purchase the land prior to the consideration of any private offers.⁸

Any public or private entity or person may request that state lands be surplus. The request must be reviewed by the lead managing agency, which must make a recommendation to the ARC within 90 days of receiving the request.⁹

For land not encumbered by a lease, the BOT is entitled to receive all proceeds from the sale of state land and its products, and the proceeds are to be deposited in the Internal Improvement Trust Fund.¹⁰ If an agency has leased land from the BOT, the agency is entitled to the proceeds from the sale of products on, under, growing out of, or connected with the land.¹¹

III. Effect of Proposed Changes:

Section 1. The bill creates an unnumbered section of the Florida Statutes which directs the BOT to privatize the ownership of state facilities when: (1) the majority of tenants are private businesses; and (2) when the majority of these tenants petition the BOT to sell a facility that meets one of the following criteria:

- ▶ the facility is more than 25 years old and is need of substantial capital improvements;

³Section 253.03(2), F.S.

⁴Rule 18-2.018, F.A.C.

⁵Section 253.034(4), F.S.

⁶Sections 253.02(2) and 253.034(6), F.S; .

⁷Section 253.034(6)(e), F.S.

⁸Section 253.111, F.S.

⁹Section 253.034(I), F.S.

¹⁰Sections 253.01 and 253.03(2), F.S.

¹¹Section 253.02(2), F.S.

- ▶ the Office of Program Policy Analysis and Governmental Accounting (OPPAGA) has issued a report questioning the long-term viability of the facility or stating that the sale of the facility is appropriate;¹²
- ▶ a state agency has included substantial capital improvements in its budget request and the request has been unfunded for two consecutive years; or
- ▶ the facility requires asbestos removal and the removal has not been undertaken within two years after the discovery of the asbestos.

The bill defines terms. “Substantial capital improvement” means that the improvement’s cost would exceed 25 percent of the appraised value of the property, including the cost of removal and replacement of outdated buildings on the public property. “State facility” means public property and buildings consisting of 25 acres or less of state-owned land that is improved with office space and is leased by the state to private tenants that occupy the majority of the square footage of the leased space. “Majority private business tenants” means the nongovernmental lessees of the state facilities which lease the majority of the square footage available for lease.

The bill requires the BOT to procure three appraisals for the facility within six months of receiving a petition. Within 9 months after the return of the appraisals, the BOT must execute an agreement for the purchase of the facility at the average price of the appraisals. The petitioning tenants are given the right of first refusal to purchase the facility, and this right must be exercised within 90 days after notice of the sale to the tenants.

Section 2. The bill provides that it takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹²The OPPAGA has represented that it has not released any reports to date which question the long-term viability of a facility or which provide that the sale of a facility is appropriate.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The BOT would be required to sell state facilities under certain circumstances upon the petition of a majority of the private business tenants. The number of state facilities which would be affected by this requirement is unknown, and thus, the effect on state revenues is indeterminate.

This bill deals with significant financial issues in a summary sense and should be reviewed for its particular impact upon all state agencies.

VI. Technical Deficiencies:

The bill defines “majority private business tenants” as, “the nongovernmental lessees of the state facilities which lease the majority of the square footage of state facilities which is for lease.” There appears to be a drafting error in this definition, and it should be clarified.

VII. Related Issues:

Current law requires the ARC to review a proposed surplusing of state land, and requires at least four of the BOT’s members to approve the surplus. The purpose of this review is to ensure that the sale is in the public interest as required by Article X, s. 11 of the State Constitution. This review is foreclosed by the bill, however, as it makes the BOT’s sale of a public facility mandatory under certain circumstances.

Furthermore, current statute requires that the county in which the land to be sold is located be given the first opportunity to purchase the land. Under the bill, however, the right of first refusal on the sale of the facility is given to the private business tenants.

A “state facility,” as used in the bill, is a loosely defined term. Except for the criterion of age, it could include buildings such as the Hermitage in Tallahassee, a real property asset of the State Board of Administration’s Florida Retirement System Trust Fund which is partially rented to the private sector.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
