

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2158
 SPONSOR: Senator Fasano
 SUBJECT: Public Records / Surplus State-Owned Lands
 DATE: April 1, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides a time-limited public records exemption for information regarding the value of lands determined by the Board of Trustees of the Internal Improvement Trust Fund (Trustees) to be surplus lands and available for sale, exchange or disposal. The Division of State Lands (division) at the Department of Environmental Protection (DEP) is authorized to disclose appraisals, valuations, or valuation information about lands declared surplus under certain conditions, notwithstanding the exemption.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act of 1995, and is repealed on October 2, 2009, unless reviewed and reenacted by the Legislature. The bill establishes legislative findings that the temporary preservation of valuation information is a public necessity that ensures the maximum return to the state from the disposition of surplus lands.

This bill must be enacted by a two-thirds vote of each house of the Legislature.

This bill substantially amends s. 253.034, Florida Statutes.

II. Present Situation:

Access to Public Records and Meetings - s. 24, Art. I, State Constitution

In the 1992 General Election, more than 80 percent of the persons voting approved Revision #2 to the State Constitution entitled "Access to Public Records and Meetings." Section 24, Art. I of the State Constitution was created to establish that "every person has the right to inspect or copy any public record made or received in connection with the official business of any public body,

officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution."

Revision #2 also authorized the Legislature to create a public records exemption if the law establishing the exemption specified the public necessity of the exemption. In 2002, more than 75 percent of persons voting in the 2002 General Election approved Revision #4 to the State Constitution, entitled "Laws Providing Public Records or Meetings Exemptions; Two-Thirds Vote Required." Revision #4 amended s. 24, Art. I, to require that laws providing exemptions from public records or public meeting requirements must be passed by a two-thirds vote of each house of the Legislature.

Public Records - chapter 119, F.S.

Section 119.07 (1), F.S., provides that persons with custody of public records shall permit the record to be inspected and examined by any person desiring to do so at reasonable times and under reasonable conditions.

The "Open Government Sunset Review Act of 1995" (Act) established in s. 119.15, F.S., provides that in the 5th year after the enactment of a new public records exemption, the exemption shall be repealed unless the Legislature reviews and reenacts the exemption. Any law creating a new exemption must provide for the 5-year repeal and review. The Act provides that in the legislative review of the exemption the following criteria must be applied:

- What specific records or meetings are exempt;
- Who is specifically affected by the exemption, as opposed to the general public;
- What the identifiable public purpose or goal of the exemption is; and
- Can information being excluded be obtained by alternative means.

The Act also provides that an exemption can be created or maintained only if it serves an identifiable public purpose, and establishes identifiable public policy criteria as:

- The effective and efficient administration of a governmental program by the state or a political subdivision, and the impairment of that administration without the exemption;
- The protection of sensitive information which could be defamatory if released;
- The protection of information of a confidential nature concerning entities (such as formulas or patterns), or the compiling of information used to protect or further a business advantage if the business entity can be damaged by the release of the information.

Surplus State-owned Lands s. 253.034 (6), F.S.

Current law provides that the Trustees determine which state-owned lands can be surplused. For conservation lands, 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. The Trustees can determine that all other lands are no longer needed by the state and can dispose of them with an affirmative vote of three of the four Trustees.

The division serves as staff to the Trustees and is responsible for determining the sales price of lands declared to be surplus. 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. For any property where one appraisal values property at more than \$1 million, two appraisals are required. For all property, the division must give consideration to the price originally paid by the state. Any public or private entity or person can request that the Trustees consider surplus property.

Under the provisions of s. 253.025 (6), F.S., appraisal reports for property being purchased by state are confidential and exempt from the provisions of s. 119.07 (1), until an option contract is executed, or until 2 weeks before a contract or agreement for purchase is considered for approval by the Trustees. The division is authorized to disclose appraisal information to public agencies or nonprofit organizations that agree to maintain the confidentiality of the appraisals when a joint acquisition with an agency or organization is being considered.

Division of State Lands, DEP

According to information provided by the DEP, a person interested in purchasing surplus state-owned lands with access to the appraisal of the surplus property being disposed of hinders an agent's ability to negotiate the transaction. A potential purchaser assumes that the property is being sold at appraised value, the negotiator has to defend the appraisal, or the purchaser wants to contest how the appraiser arrived at the property valuation.

III. Effect of Proposed Changes:

Section 1. Amends subsection (6) of s. 253.034, F.S., to provide that a written valuation for state-owned lands declared surplus by the Trustees, and related documents used to form the valuation, have a time-limited exemption from the public records provisions of s. 119.07 (01), F.S., and s. 24 (a), Art. I of the State Constitution. Provides that the exemption expires 2 weeks before the Board first considers an agreement associated with the disposal of the property.

Authorizes the division, notwithstanding the exemption, to disclose appraisals, valuations, or valuation information regarding surplus lands during negotiations for the sale or exchange of the land, during the marketing effort or bidding process, when the passage of time has made the conclusions of value invalid, or when negotiations or marketing efforts concerning the property are complete. Requires that the time-limited exemption be reviewed under the provisions of the Open Government Sunset Review Act of 1995. Repeals the time-limited exemption on October 2, 2009, unless the exemption is reviewed and reenacted by the Legislature.

Section 2. Establishes legislative findings that the temporary preservation of confidential information relating to the valuation of state-owned lands surplus under the provisions of s. 253.034 (6), F.S., is a public necessity, that the temporary exemption helps ensure the maximum return to the state from the disposition of surplus lands, and that earlier access to valuation information would impede development of agreements that maximize the state's return by providing interested persons with an unfair advantage during negotiation or bidding processes for the sale, exchange, or disposal of surplus state-owned lands.

Section 3. Provides that the act shall take effect July 1, 2004.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

Pursuant to s. 24 (c), Art. I of the State Constitution, this bill must pass by a two-thirds vote of each house of the Legislature.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Persons purchasing surplus state-owned property may pay more as the division will have a stronger negotiating advantage.

C. Government Sector Impact:

The DEP anticipates a positive fiscal impact for the state's land managing agencies if this bill is enacted as revenue from the disposal of surplus state-owned lands is returned to the state agency with primary land management responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.