

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 705 Pub. Rec./Water Management District Surplus Lands

SPONSOR(S): Oversight, Transparency & Administration Subcommittee, Natural Resources & Public Lands Subcommittee and Burgess, Jr.

TIED BILLS: HB 703 **IDEN./SIM. BILLS:** SB 808

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	11 Y, 2 N, As CS	Gregory	Shugar
2) Oversight, Transparency & Administration Subcommittee	12 Y, 1 N, As CS	Hoffman	Harrington
3) Government Accountability Committee			

SUMMARY ANALYSIS

A water management district ("WMD") may acquire real property for flood control, water storage, water management, conservation and protection of water resources, aquifer recharge, water resource and water supply development, and preservation of wetlands, streams, and lakes. Unlike most state lands, these lands are held and conveyed in the name of the WMD, not the Board of Trustees of the Internal Improvement Trust Fund ("Board of Trustees"). A WMD may sell lands its governing board determines to be surplus at any time. These lands must be sold at the highest price obtainable, but not less than the appraised value of the land determined by a certified appraiser 360 days before the sale.

The bill, which is linked to the passage of HB 703, creates a public record exemption for written valuations of WMD land determined to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. The public record exemption expires when the WMD approves the contract or agreement regarding the purchase, exchange, or disposal of the surplus land.

The bill authorizes a WMD to disclose confidential and exempt valuations, valuation information related to surplus land, or written offers to purchase such surplus land to potential purchasers before the expiration of the exemption:

- 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;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

The bill may have an insignificant fiscal impact on a WMD.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, section 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency to provide access to public records.² Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.³

Public Records Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the State Constitution.⁴ The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.⁵

The Open Government Sunset Review Act provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose.⁶ In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁷

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October second of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁸

¹ FLA. CONST., art. I, s. 24(a).

² 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 chapter 119, F.S., 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; 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 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.

³ Nat'l Collegiate Athletic Ass'n v. Associated Press, 18 So. 3d 1201, 1206 (Fla. 1st DCA 2009).

⁴ FLA. CONST., art. I, s. 24(c).

⁵ *Id.*

⁶ Section 119.15, F.S.

⁷ Section 119.15(6)(b), F.S.

⁸ Section 119.15(3), F.S.

Confidential versus Confidential and Exempt

When creating a public record exemption, the Legislature designates the record as “exempt” or “confidential and exempt.” There is a difference between records the Legislature has designated as exempt and those designated as confidential and exempt. A record that is designated as confidential and exempt may only be released by the records custodian to those persons or entities designated in statute.⁹ However, records designated as exempt may be disclosed under certain circumstances and does not impose a secrecy requirement which bars a custodian from displaying a public record entirely of his or her own volition.¹⁰

Surplus of Water Management District Lands

A water management district (“WMD”) may acquire real property for flood control, water storage, water management, conservation and protection of water resources, aquifer recharge, water resource and water supply development; and preservation of wetlands, streams, and lakes.¹¹ Unlike most state lands, these lands are held and conveyed in the name of the WMD, not the Board of Trustees of the Internal Improvement Trust Fund (“Board of Trustees”).¹²

The five WMDs own approximately 1,908,969 acres of conservation land.¹³ Approximately 1,481,129 acres are held in fee simple, while 427,840 acres are held in conservation easements.¹⁴ In addition to the purposes described above, the WMDs manage their lands for recreation, camping, trail use, hunting, and revenue generation.¹⁵

A WMD may sell lands its governing board determines to be surplus at any time.¹⁶ If a WMD decides to sell its real property, or interest therein, it must follow the procedures in ss. 373.056 or 373.089, F.S.¹⁷ These lands must be sold at the highest price obtainable, but not less than the appraised value of the land determined by a certified appraiser 360 days before the sale.¹⁸

Public Record Exemptions for Written Valuations of Land and Written Offers

Currently, there is no public record exemption for written valuations of WMD land determined to be surplus, related documents used to form, or which pertain to, the valuation, and written offers to purchase such surplus land.

A public records exemption exists for written valuations of land owned by the Board of Trustees determined to be surplus and related documents used to form the valuation or that pertain to the valuation.¹⁹ The exemption expires two weeks before the Board of Trustees first considers for approval the contract or agreement regarding the purchase, exchange, or disposal of the surplus land.²⁰ The Department of Environmental Protection (“DEP”) may disclose the confidential and exempt appraisals, valuations, or valuation information regarding surplus land before the exemption expires:

- 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;

⁹ *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

¹⁰ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

¹¹ Section 373.139(2), F.S.

¹² Section 373.099, F.S.

¹³ Florida Natural Areas Inventory, *Summary of Florida Conservation Lands February 2017*, available at: http://www.fnai.org/PDF/Maacres_201702_FCL_plus_LTF.pdf (last visited Dec, 13, 2017).

¹⁴ *Id.*

¹⁵ FLORIDA HIKES!, *Recreation on Florida’s Water Management District lands*, <http://floridahikes.com/category/public-lands/water-management-districts> (last visited Dec. 14, 2017).

¹⁶ Section 373.089(1), F.S.

¹⁷ Section 373.139(6), F.S.

¹⁸ Section 373.089(1), F.S.

¹⁹ Section 253.0341(8), F.S.

²⁰ *Id.*

- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.²¹

All appraisals, other reports relating to value, offers, and counteroffers are exempt 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.²² This exemption expires upon execution of a valid option contract or the agency conditionally accepts a written offer to sell.²³ For the purpose of the exemption, the term “option contract” means an agreement of an agency of the executive branch of state government to purchase real property subject to final agency approval.²⁴ If parties do not execute a valid option contract, or the agency does not conditionally accept a written offer to sell, then the exemption shall expire at the conclusion of the condemnation litigation of the subject property.²⁵

Lastly, appraisal reports, offers, and counteroffers for lands a WMD is seeking to purchase are confidential and exempt until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing board.²⁶ A WMD may, at its discretion, disclose appraisal reports to private landowners during negotiations for acquisitions using alternatives to fee simple techniques, if the WMD determines that disclosure of such reports will bring the proposed acquisition to closure.²⁷ If negotiation is terminated by the WMD, the appraisal report, offers, and counteroffers shall become available.²⁸ A WMD and DEP may share and disclose appraisal reports, appraisal information, offers, and counteroffers when joint acquisition of property is contemplated.²⁹ A WMD and DEP must maintain the confidentiality of such appraisal reports, appraisal information, offers, and counteroffers, except in those cases where a WMD and DEP have exercised discretion to disclose such information.³⁰ A WMD may disclose appraisal information, offers, and counteroffers to a third party who has entered into a contractual agreement with the WMD to work with or on the behalf of or to assist the district in connection with land acquisitions.³¹ The third party must maintain the confidentiality of such information in conformance with this section.³² In addition, a WMD may use, as its own, appraisals obtained by a third party provided the appraiser is selected from the WMD’s list of approved appraisers and the appraisal is reviewed and approved by the district.³³

HB 703 (2018)

HB 703 makes several changes to the surplus procedures for WMDs to create efficiencies in the process. Specifically, the bill:

- Requires a WMD to publish notice of its intent to sell surplus property at least 30 days, but not more than 360 days, before the WMD approves the sale. Current law does not specify a date from which the 30 or 360 days must be counted;
- Authorizes a WMD to sell land valued at \$25,000 or less to the adjacent property owner rather than giving such property owners the opportunity to purchase the property before the rest of the general public;
- Requires a WMD to publish the notice of intention to offer to sell land valued at \$25,000 or less to adjacent property owners in the newspaper in the county where the land is located only one time;

²¹ *Id.*

²² Section 119.0711, F.S.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Section 373.139(3)(a), F.S.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

- Defines “adjacent property owners;” and
- Removes the requirement that a WMD accept sealed bids and sell the property to the highest bidder or reject all offers 30 days after publication of notice, if the WMD does not sell the land to the adjacent property owner. Instead, the bill authorizes a WMD to sell the parcel valued at \$25,000 or less at any time to the general public for the highest price obtainable, if the WMD does not sell the parcel to the adjacent property owner.³⁴

Effect of the Proposed Changes

The bill, which is linked to the passage of HB 703, creates a public record exemption for written valuations of WMD land determined to be surplus, related documents used to form, or which pertain to, the valuation, and written offers to purchase such surplus land.³⁵ The bill provides that such documents are confidential and exempt from public record requirements.³⁶ The bill provides that the public record exemption will expire when the WMD approves the contract or agreement regarding the purchase, exchange, or disposal of the surplus land.

The bill authorizes a WMD to disclose confidential and exempt valuations, valuation information related to surplus land, or written offers to purchase such surplus land to potential purchasers before the expiration of the exemption to facilitate successful or expedited closure of the sale of 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;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

The bill provides for repeal of the exemption 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 State Constitution. Specifically, the bill finds that the public availability of such valuations, related documents, and written offers can negatively impact the ability of a WMD to negotiate with potential purchasers and potentially places a WMD at a disadvantage in attempting to maximize the return on the sale of surplus land.

B. SECTION DIRECTORY:

- Section 1. Amends s. 373.089, F.S., creating a public record exemption for written valuations of WMD land determined to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land.
- Section 2. Provides a public necessity statement.
- Section 3. Provides an effective date that is contingent upon the passage of HB 703 or similar legislation.

³⁴ Florida House of Representatives, Analysis of 2018 House Bill 703, p. 1 (Dec. 6, 2017).

³⁵ *Id.*

³⁶ The public record exemption created in the bill for WMDs is similar to the exemption for written valuations of land owned by the Board of Trustees determined to be surplus and related documents used to form the valuation or that pertain to the valuation in s. 253.0341(8)(a), F.S. However, it adds written offers to purchase such surplus lands.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may negatively affect potential surplus land purchasers who use public record requests to gain a competitive advantage when making offers for surplus WMD parcels.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on a WMD because staff responsible for complying with public record requests could require training related to the new public record exemption. In addition, a WMD may incur costs associated with redacting the exempt financial information prior to releasing a record. However, these costs can be absorbed as they are part of the day-to-day responsibilities of a WMD.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption. Thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for written valuations of WMD land determined to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2017, the Natural Resources & Public Lands Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Provide for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature; and
- Authorize WMDs to disclose valuations, valuation information which are related to surplus land, or written offers to purchase such surplus land to potential purchasers.

On January 10, 2018, the Oversight, Transparency & Administration Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that the public record exemption expires when the WMD approves the contract or agreement regarding the purchase, exchange, or disposal of the surplus land. The amendment also conforms the public necessity statement to the revised exemption.

The bill analysis is drafted to the committee substitute as passed by the Oversight, Transparency & Administration Subcommittee.