

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 Environment and Natural Resources

BILL: SPB 7004

INTRODUCER: For consideration by the Environment and Natural Resources Committee

SUBJECT: OGSR/Written Valuations of Surplus Lands

DATE: February 14, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Barriero</u>	<u>Rogers</u>	_____	Pre-meeting

I. Summary:

SPB 7004 amends s. 373.089(1), F.S., to save from repeal the public records exemption for written valuations of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, such valuations; and written offers to purchase such surplus land. The 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 district.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemption in s. 373.089, F.S., is scheduled to repeal on October 2, 2023. This bill removes the scheduled repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2023.

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act provides:

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.^[4]

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions are often located in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with certain exceptions.¹⁷ The Act requires the repeal of such exemptions 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 or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.¹⁹ 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;²⁰
- 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;²¹ or
- It protects trade or business secrets.²²

¹² FLA. CONST., art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ 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 records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

In reviewing an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption. The Act also requires the Legislature to consider specific questions during the review process.²³

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal 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 expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Water Management District Surplus Land

Water management districts (WMDs) are responsible for the administration of water resources at a regional level. There are five WMDs established within the state: Northwest Florida, South Florida, Southwest Florida, St. Johns River, and Suwanee River. The WMDs 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.²⁶

A WMD's governing board can sell land, or interests or rights in land, that the board determines to be surplus.²⁷ For lands that were acquired for conservation purposes, the governing board must make a determination that the lands are no longer needed for conservation purposes and may dispose of them by a two-thirds vote.²⁸ For all other lands, the governing board must make a determination that such lands are no longer needed and may dispose of them by majority vote.²⁹ Surplus lands must be sold at the highest price obtainable, but not be less than the appraised value of the lands, as determined by a certified appraisal obtained within 360 days before the effective date of the contract for sale.³⁰ Sales must be for cash or upon terms and security approved by the governing board, but a deed cannot be executed and delivered until full payment is made.³¹ Before selling any surplus land, the WMD must publish a notice of intention to sell on its website and in a newspaper published in the county where the land is situated once each week

²³ Section 119.15(6)(a), F.S. The 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?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ Section 373.139(2), F.S.

²⁷ Section 373.089(1)(a), F.S.

²⁸ Section 373.089(6)(a), F.S. and FLA. CONST. art. X, s. 18.

²⁹ Section 373.089(6)(b), F.S.

³⁰ *Id.*

³¹ Section 373.089(2), F.S.

for three successive weeks.³² The first publication must occur at least 30 days, but not more than 360 days, before any sale is approved by the WMD.³³

For lands acquired with Florida Forever funds and no longer needed for conservation purposes, the governing board must first offer title to the Board of Trustees of the Internal Improvement Trust Fund unless the disposition of those lands is for the following purposes:

- Linear facilities, including electric transmission and distribution facilities, telecommunication transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances.
- The disposition of the fee interest in the land where a conservation easement is retained by the district to fulfill the conservation objectives for which the land was acquired.
- An exchange of the land for other lands that meet or exceed the conservation objectives for which the original land was acquired.
- To be used by a governmental entity for a public purpose.
- The portion of an overall purchase deemed surplus at the time of the acquisition.³⁴

Open Government Sunset Review Findings and Recommendations

Section 373.089(1)(b), F.S., provides that the following documents are confidential and exempt from public records requirements: written valuations of land determined by a governing board of a WMD to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. Finding that the public availability of this information can negatively impact a WMD's ability to negotiate with potential purchasers and maximize the return on the sale of surplus land, the Legislature created this exemption to facilitate the successful and/or expedited closure of the sale of such land.³⁵

The 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 district.³⁶ WMDs may also disclose these otherwise confidential documents to potential purchasers in the following circumstances:

- 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.³⁷

This public records exemption stands repealed on October 2, 2023, unless reenacted or saved from repeal by the Legislature.

³² Section 373.089(3), F.S.

³³ Section 373.089(3), F.S.

³⁴ Section 373.089(7), F.S.

³⁵ Chapter 2018-156, Laws of Fla.

³⁶ Section 373.089(1)(b), F.S.

³⁷ Section 373.089(1)(c), F.S.

A questionnaire was sent to each WMD asking whether the exemption in s. 373.089(1)(b) and (c), F.S., should be repealed or reenacted. All five WMDs recommend the exemption's reenactment without any changes. WMD representatives explained that having the option to withhold or disclose the information covered by this exemption has assisted them in negotiating with potential purchasers and maximizing the return on the sale of surplus land.

With the exception of Suwannee River WMD, which did not sell any surplus land since the exemption's creation,³⁸ the WMDs have disclosed the valuation of surplus land for sale and related documentation with varying degrees of transparency. For example, St. Johns River WMD (SJRWMD) uses a sealed bid procurement process and discloses the appraised value of the property—but not the exempt record itself—as part of its minimum bid calculation, which is included in invitations to offer.³⁹ South Florida WMD (SFWMD) provides more extensive information to the public during the bidding process, including appraisals, environmental data, and title research. SFWMD's representatives explained this transparency allows potential bidders to have access to a significant amount of information about the property, helping them make an informed decision before placing a bid.⁴⁰ SFWMD nevertheless recommends reenacting the exemption, recognizing that the exemption may assist other agencies in negotiations and that its own sealed bid procedure could change in the future and the exemption would assist SFWMD at that time.⁴¹

III. Effect of Proposed Changes:

Section 1 repeals the October 2, 2023 sunset date for the public records exemption in s. 373.089(1)(b) and (c), F.S., for the following documents relating to the sale of surplus lands by a water management district:

- Written valuations of surplus land;
- Documents pertaining to such valuations; and
- Written offers to purchase surplus land.

Section 2 provides an effective date of October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁸ Suwannee River WMD, *Open Government Sunset Review Questionnaire*, at 2.

³⁹ St. Johns River WMD, *Open Government Sunset Review Questionnaire*, at 4.

⁴⁰ Email from Phil Flood, Legislative Liaison, South Florida Water Management District to Senate Committee on Environment and Natural Resources (Oct. 27, 2022).

⁴¹ See generally South Florida WMD, *Open Government Sunset Review Questionnaire*, at 3-5.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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 Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.