

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
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As Engrossed: H3/22/13
A Bill

HOUSE BILL 1823

By: Representative Ballinger
By: Senator Rapert

For An Act To Be Entitled

AN ACT TO REGULATE THE ADMINISTRATION OF REAL
PROPERTY OF THE STATE AND POLITICAL SUBDIVISIONS OF
THE STATE; AND FOR OTHER PURPOSES.

Subtitle

TO REGULATE THE ADMINISTRATION OF REAL
PROPERTY OF THE STATE AND POLITICAL
SUBDIVISIONS OF THE STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 22-5-209 is amended to read as follows:

22-5-209. Deeds, abstracts, and contracts affecting state lands filed in office of Commissioner of State Lands – Additional information – Failure to comply.

(a) All deeds, abstracts, contracts, and other evidences of title to realty belonging to the State of Arkansas shall be filed in the office of the Commissioner of State Lands to be preserved by the Commissioner of State Lands as ~~the~~ other public records and files of his or her office.

(b) Separately for each item of real property in the possession of a state agency, the state agency shall maintain and furnish to the Commissioner of State Lands a record containing:

(1)(A) The official recording information shown by the county recorder's records and the legal description of the real property.

(B) A copy of the most recent deed to the property may be furnished to the Commissioner of State Lands if the copy contains the



official recording information and the legal description;

(2) If the real property was purchased by a state agency, the date of purchase and the purchase price;

(3) The name of the state agency holding title to the real property for the state;

(4) A description of the current uses of the real property and of the projected future uses of the real property; and

(5) A description of each building or other improvement located on the real property.

(c) If the description of real property required under subsection (b) of this section is excessively voluminous, the Commissioner of State Lands may permit the state agency in possession of the real property to furnish the description in summary form.

(d) Annually at the time established by the Commissioner of State Lands, a state agency other than an institution of higher education shall furnish the Arkansas History Commission with a photograph and identifying information including the age of each building that:

(1) Is owned or controlled by the state agency and has become forty-five (45) years old since the date the information was previously submitted; or

(2) Was acquired by the agency after the date of the preceding annual submission and is at least forty-five (45) years old on the date of the current submission.

(e) Upon request, a state agency shall provide the Commissioner of State Lands with a photograph and information furnished to the Arkansas History Commission under subsection (d) of this section.

(f) If a state agency receives a proposal for the sale, transfer, or exchange of real property that may benefit the state, the state agency shall within fourteen (14) days and before accepting the proposal shall submit to the Commissioner of State Lands:

(1) A summary of the proposal;

(2) An evaluation of the proposed real estate transaction including an analysis of the anticipated costs, benefits, and detriments of the proposal; and

(3) The state agency's recommendation and reasons for the recommendation.

~~(b)(g) In the event any state office, department, agency, or institution fails or refuses to~~ If a state agency does not comply with ~~the provisions of subsection (a) of this section,~~ the Commissioner of State Lands shall report the failure ~~or refusal~~ to comply to the Governor, who shall notify the administrative officer of the ~~office, department, state agency, or institution~~ to immediately report to him or her the reasons for ~~his or her~~ the state agency's failure or refusal to comply.

~~(e)(h) Willful failure or refusal to comply with this section by any officer~~ a public official shall constitute nonfeasance in office.

(i) As used in this section:

(1)(A) "State agency" means an instrumentality of state government including without limitation, an office, a department, an agency, a board, a commission, or an institution of the state.

(B) "State agency" does not include"

(i) The Arkansas State Highway and Transportation Department;

(ii) An institution of higher education;

(iii) The Arkansas Public Employees' Retirement System;

(iv) The Arkansas Teacher Retirement System;

(v) The Arkansas State Game and Fish Commission; or

(vi) The Arkansas Department of Emergency Management.

SECTION 2. Arkansas Code Title 22, Chapter 5, Subchapter 2, is amended to add an additional section to read as follows:

22-5-210. Real property records of the Arkansas State Highway and Transportation Department, institutions of higher education, the Arkansas Public Employees' Retirement System, the Arkansas Teacher Retirement System, and certain other properties.

(a) With respect to real property administered by the Arkansas State Highway and Transportation Department, an institution of higher education, the Arkansas Public Employees' Retirement System, and the Arkansas Teacher Retirement System:

(1) The Arkansas State Highway and Transportation Department, an institution of higher education, the Arkansas Public Employees' Retirement

System, and the Arkansas Teacher Retirement System shall each maintain inventory records of the real property it owns or controls; and

(2) The Commissioner of State Lands may:

(A) Review, verify, and maintain inventory records of the real property; and

(B) Prepare reports and make recommendations concerning the best use of the real property.

(b) At the request of the Commissioner of State Lands:

(1) The Arkansas State Highway and Transportation Department shall submit its real property inventory records that are not related to the roadways and bridges it maintains; and

(2) No more than semiannually, the real property inventory records of an institution of higher education, the Arkansas State Game and Fish Commission, the Arkansas Public Employees' Retirement System, and the Arkansas Teacher Retirement System, may be submitted to the Commissioner of State Lands for information purposes only.

(c) The duties of the Commissioner of State Lands under this subchapter and § 22-5-301 et seq. do not apply to:

(1) Real property that is owned by the state but is managed by the federal Government;

(2) The real property composing the State Capitol Complex;

(3) The real property composing the Governor's Mansion;

(4) The real property composing the Arkansas State Veterans Cemetery;

(5) Highway rights-of-way owned by the Arkansas State Highway and Transportation Department;

(6) The real property composing the Old State House Museum; and

(7) The real property owned by the Arkansas Department of Emergency Management.

SECTION 3. Arkansas Code § 22-5-303 is amended to read as follows:

22-5-303. Additional duties of Commissioner of State Lands.

In addition to other duties and powers conferred by law upon the Commissioner of State Lands, he or she shall ~~have the following duties and powers:~~

~~(1) To effectuate~~ Effectuate the policies and carry out the

purposes declared in § 22-5-301, ~~to carry out its purposes including by securing the cooperation and assistance of the United States and any of its agencies, and to enter~~ entering into contracts, agreements, and conveyances necessary to secure ~~such~~ federal assistance;

(2) ~~To conduct~~ Conduct investigations, independently or jointly with other state and federal agencies, relating to conditions and factors affecting, and methods of accomplishing more effectively, the purposes of this subchapter;

(3) ~~To assign~~ Assign lands to the several state agencies for administration, subject to their agreement and acceptance;

(4) Review, compile, and maintain inventory records of the real property owned by the State of Arkansas based upon the information submitted under §§ 22-5-209 and 22-5-411, and the records in his or her office;

(5) Make recommendations and take appropriate action concerning the best use of land owned by the state and its political subdivisions; and

(6) Accept unsolicited proposals and may solicit proposals concerning real estate transactions that would benefit the state.

SECTION 4. Arkansas Code § 22-5-305(b), concerning the membership of the State Land Use Committee, is amended to read as follows:

(b) The Commissioner of State Lands shall appoint one (1) member from each of the ~~seven (7)~~ four (4) congressional districts and ~~two (2)~~ five (5) members at large for a term of two (2) years.

SECTION 5. Arkansas Code § 22-5-306 is amended to read as follows:

22-5-306. Appraisers – Qualifications, oath, and bond.

(a) The Commissioner of State Lands ~~shall~~ may appoint ~~such~~ appraisers ~~as are provided for by any appropriation~~ to inspect and appraise state-owned lands for sale, transfer, or donation.

~~(b) It shall be unlawful for the Commissioner of State Lands to dispose of state-owned lands without an appraisal made by appraisers appointed by the Commissioner of State Lands, except that he or she may sell or dispose of town lots and acreage descriptions of ten (10) acres or less without an appraisal.~~

~~(c)~~ (b) Each appraiser selected shall, by education or experience, be familiar with and know how to arrive at the value of lands, water rights,

mineral rights, timber lands, rural lands, agricultural lands, and noncultivable lands; shall understand legal descriptions of real properties; shall have a working knowledge of county and state real property records; and shall be capable of passing dependable judgments upon the values of rural properties.

~~(d)~~(c) Upon entering the duties of his or her office, each appraiser shall take an oath of office as prescribed in the Arkansas Constitution, Article 19, § 20. This oath shall state that he or she will not, directly or indirectly, be engaged in the purchase of state-owned lands during his or her continuance in office and that he or she will not engage in any speculation of state-owned lands or give information to any agent, friend, or secret or other partner so as to secure the advantages of that information to himself or herself or to any person, association, or company to the prejudice or exclusion of other persons.

~~(e)~~(d) Each appraiser shall enter into bond to the state in the sum of one thousand dollars (\$1,000), to be furnished by a surety company authorized to do business in the State of Arkansas, conditioned that he or she will faithfully discharge all of his or her duties according to law and the rules and regulations of the State Land Use Committee.

~~(f)~~(e) After qualifying as provided in this section, each appraiser shall perform his or her duties in the manner prescribed by the Commissioner of State Lands.

SECTION 6. Arkansas Code § 22-5-307(b), concerning the disposition of state lands, is amended to read as follows:

(b)(1) The Commissioner of State Lands shall dispose of the lands and make deeds to the lands in accordance with ~~this~~ the classification under subsection (a) of this section.

(2) ~~Only~~ With the approval of the Governor and review by the General Assembly or the Legislative Council, lands classified as suitable for return to private ownership ~~shall be subject to sale~~ may be sold under § 22-5-312 and subsection (e) of this section to private ~~individuals~~ parties by the Commissioner of State Lands.

SECTION 7. Arkansas Code § 22-5-307, concerning the disposition of state lands, is amended to add an additional subsection to read as follows:

(h) Tax delinquent lands are not subject to the terms and restrictions of this section and may be disposed of as required by law.

SECTION 8. Arkansas Code Title 22, Chapter 5, Subchapter 3, is amended to add additional sections to read as follows:

22-5-312. Authority of Commissioner of State Lands, state agencies, and political subdivisions to conduct certain real property transactions.

(a)(1) The Commissioner of State Lands may sell at auction or under subdivision (a)(3) of this section land approved for return to private ownership under § 22-5-307.

(2) The auction may be advertised and conducted at the same time and in the same manner as tax delinquent lands under § 26-37-201 et seq.

(3) If the auction does not result in the sale of the land, the Commissioner of State Lands may:

(A) Negotiate a private sale under the terms and conditions of § 26-37-202; or

(B)(i) List the property for sale with a real estate broker licensed under the Real Estate License Law, § 17-42-101 et seq.

(ii) The Commissioner of State Lands shall by rule establish criteria to ensure the fair and impartial selection of the real estate broker.

(b)(1) A state agency or political subdivision of the state may sell, transfer, or exchange real property that it owns if the sale, transfer, or exchange is for market value.

(2) The state agency or political subdivision of the state shall notify the Commissioner of State Lands in writing and provide a copy of the recorded deed or other instrument evidencing the sale, transfer, or exchange within thirty (30) days of the sale, transfer, or exchange.

22-5-313. Reports and recommendations of Commissioner of State Lands.

(a) Except for real property excluded under § 22-5-210, separately or with the assistance of the State Land Use Committee, the Commissioner of State Lands shall report on and make recommendations concerning the real property inventory of each state agency:

(1) At least one (1) time every four (4) years; and

(2) During the calendar year before a state agency is abolished

or otherwise discontinued.

(b) The report and recommendations shall:

(1) Determine the purpose for which the real property owned or controlled by the state agency is currently being used and the plans for future use by the state agency;

(2) Identify real property that is not being used or is being substantially underused; and

(3) Include an analysis of:

(A) The highest and best use for the real property; and

(B) Alternative uses of the real property including the potential for:

(i) Leasing the real property for commercial or agricultural uses; or

(ii) Any other real estate transaction or use that may be in the best interest of the state.

(c) Upon request, a state agency shall provide the Commissioner of State Lands within thirty (30) days of the request information to assist the evaluation of a proposed use of real property, including without limitation:

(1) The status of the real property;

(2) Alternative uses of the property considered by the state agency within the previous five (5) years;

(3) Proposals received within the previous five (5) years from private parties concerning the real property; and

(4) Any plans to change the use or dispose of the real property.

(d) On or before July 1 annually, the Commissioner of State Lands shall:

(1) Prepare a draft evaluation report containing its findings and recommendations for at least twenty-five percent (25%) of the real property owned by the state; and

(2) Submit the draft evaluation report to each state agency named in the report and request the state agency's comments concerning the findings and recommendations made by the Commissioner of State Lands.

(e)(1) On or before September 1 annually, the Commissioner of State Lands shall submit a final evaluation report containing the findings and recommendations of the Commissioner of State Lands for at least twenty-five percent (25%) of the real property owned by the state to the Governor, the

Legislative Council, the Joint Budget Committee, and each state agency named in the report.

(2) The final evaluation report shall include the comments and recommendations received from a state agency named in the report concerning the potential use of real property by the state agency or by another state agency.

(f) The Commissioner of State Lands shall not recommend a real estate transaction involving real property that is used for military purposes.

(g) If real property is identified in the final evaluation report as not being used or as being substantially underused:

(1) A political subdivision of the state shall not annex the real property without prior written approval of the Commissioner of State Lands; and

(2) A state agency that owns or controls the real property shall give the Commissioner of State Lands at least thirty-days' notice before beginning a planned development, acquisition, disposition, lease, sale, transfer, or exchange of the real property, including the planned construction of new improvements or a major modification to an existing improvement to the real property.

22-5-314. Disposition and reclassification of state lands.

(a) At any time after real property is listed in a final evaluation report under § 22-5-313, the Commissioner of State Lands may recommend in writing to the Governor that the real property be:

(1) Reclassified under § 22-5-307;

(2) Sold, transferred, exchanged, or leased; or

(3) Used for a different purpose or by a different state agency or political subdivision.

(b)(1) The Commissioner of State Lands shall notify the state agency that owns or controls real property of a recommendation concerning the real property under subsection (a) of this section.

(2) The state agency may send the Governor comments or objections to the recommendation within thirty (30) days.

(c) If the Commissioner of State Lands makes a recommendation to the Governor concerning real property identified as not used or substantially underused:

(1) The Commissioner of State Lands shall notify the Arkansas Department of Human Services and the Housing Division of the Arkansas Development Finance Authority to inspect the real property within thirty (30) days and identify any property suitable for affordable housing if the final evaluation report indicates that the highest and best use of the real property is for residential purposes;

(2)(A) The real property may be sold or leased or an easement on the property may be granted to the United States for the use and benefit of the United States armed forces if after consultation with appropriate military authorities the Governor or the Governor's designee determines that the sale, lease, or easement would materially assist the military in accomplishing its mission.

(B) A sale, lease, or easement under this subdivision (c)(2) shall be at market value.

(C) The state shall retain all mineral rights to the real property but may relinquish the right to use the surface estate to extract minerals; and

(3) The real property shall not without the approval of the Governor be developed, sold, or otherwise disposed of by the state agency that owns or controls the real property before the earlier of:

(A) The date the Governor rejects a recommendation under this section; or

(B) Two (2) years from the date the recommendation is approved, unless extended by the Governor.

(d) To determine whether to reject a recommendation under this section the Governor may:

(1)(A) Require a state agency to provide a general development plan for future use of real property and any other information about the real property.

(B) The general development plan shall be submitted no later than thirty (30) days before a recommendation under this section is approved if not disapproved by the Governor; and

(2) Request that the state agency provide its general development plan for future use of real property or any other information to the Commissioner of State Lands for evaluation and may consult with the Commissioner of State Lands.

(e) The Commissioner of State Lands may take all action necessary to implement a recommendation unless the Governor gives the Commissioner of State Lands written notice disapproving the recommendation within ninety (90) days after receiving the written recommendation of the Commissioner of State Lands.

/s/Ballinger