

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTM 20-08 OGSR/ServiceMembers and Families

SPONSOR(S): Oversight, Transparency & Public Management Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SB 7010

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee		Smith	Smith

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for the identification and location information of current or former members of the U.S. Armed Forces, their reserve components, or the National Guard, who served after September 11, 2001, and their spouses and dependents. In order for the exemption to apply, the member must submit to the custodial agency a written request that his or her information be exempt and a written statement that reasonable efforts have been made to protect the identification and location information from being accessible through other means available to the public.

Current law defines "identification and location information" to mean the:

- Home address, telephone number, and date of birth of a servicemember;
- Home address, telephone number, date of birth, and place of employment of the spouse or dependent of a servicemember; and
- Name and location of a school attended by the spouse or dependent of a servicemember or day care facility attended by a dependent.

The bill reenacts the public record exemption for the identification and location information of current or former members of the U.S. Armed Forces, their reserve components, or the National Guard, who served after September 11, 2001, and their spouses and dependents. The bill expands the exemption by removing the requirement that a servicemember provide a written statement to the custodial agency attesting that reasonable efforts have been made to protect the exempted information from being accessible through other means available to the public. As a result, the bill extends the repeal date from October 2, 2020, to October 2, 2025. It also provides a public necessity statement as required by the State Constitution.

The bill does not appear to have a fiscal impact on the state or local government.

Article I, s. 24(c) of the Florida 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 expands a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

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

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Public Record Exemption under Review

Current law provides a public record exemption for the identification and location information of current or former members of the U.S. Armed Forces, their reserve components, or the National Guard, who served after September 11, 2001, and their spouses and dependents.⁶ The term "identification and location information" is defined to mean the:

- Home address, telephone number, and date of birth of the servicemember;
- Home address, telephone number, date of birth, and place of employment of the spouse or dependent of the servicemember; and
- Name and location of a school attended by the spouse or dependent of a servicemember or day care facility attended by a dependent.

In order for the exemption to apply, the servicemember must submit to the custodial agency a written request to exempt the information from public record requirements. In addition, the servicemember must submit a written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 119.071(5)(k), F.S.

The 2015 public necessity statement⁷ for the exemption provides that:

Servicemembers perform among the most critical, most effective, and most dangerous operations in defense of our nation's freedom. Terrorist groups have threatened servicemembers and their families and have encouraged terrorist sympathizers to harm servicemembers and their families within the United States.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2020, unless reenacted by the Legislature.

Effect of the Bill

The bill reenacts and expands the public record exemption for identification and location information of current or former members of the U.S. Armed Forces, their reserve components, or the National Guard, who served after September 11, 2001, and their spouses and dependents. The bill expands the exemption by removing the requirement that a servicemember provide a written statement to the custodial agency attesting that reasonable efforts were made to protect the identification and location information from being accessible through other means available to the public. Because the bill expands the current exemption, the bill extends the repeal date from October 2, 2020, to October 2, 2025. It also provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to a public record exemption for identification and location information of current or former members of the US. Armed Forces, their reserve components, or the National Guard, who served after September 11, 2001, and their spouse and dependents.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida 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 expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption by removing the requirement that a servicemember provide a statement that reasonable efforts were made to protect the identification and location information from being accessible through other means available to the public. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.