

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 185 Public Records/Military Special Operations Units

SPONSOR(S): Gaetz

TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Veteran & Military Affairs Subcommittee		Renner	Kiner
2) Government Operations Subcommittee			
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

The bill creates a public records exemption for personal identifying information of current or former servicemembers of the United States military special operations units and their spouses and children; and the names and locations of schools and day care facilities attended by the children of such servicemembers.

The public records exemption is subject to the Open Government Sunset Review Act and must stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the State Constitution.

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

The bill has an effective date of October 1, 2015.

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:

Background

Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) and (b) of the State Constitution. 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.¹

The Open Government Sunset Review Act² provides that a public record 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:

- 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.
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.³ If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.⁴ Also, if the information is deemed to be confidential it may only be released to those persons and entities designated in the statute.⁵ However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.⁶

¹ Art I., s. 24(c), Fla. Const.

² Section 119.15(6)(b), F.S.

³ *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).

⁴ *Id.*

⁵ *Id.*

⁶ *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So.2d 289 (Fla. 1991).

Military Special Operations Units

Military special operations units are elite military units that are highly trained and specially equipped and have the ability to infiltrate into hostile territory through land, sea, or air to conduct a variety of operations, many of them classified.⁷

The U.S. Special Operations Command (SOCOM) is headquartered at MacDill Air Force Base in Tampa, FL., and oversees the training, equipping, and indoctrination of all special operations units. SOCOM's components include the U.S. Army Special Operations Command, the Naval Special Warfare Command, the Air Force Special Operations Command, and the Marine Corps Special Operations Command.⁸

Effect of Proposed Changes

The bill creates a public records exemption for personal identifying information of current or former servicemembers of the U.S. military special operations units and their spouses and children; and the names and locations of schools and day care facilities attended by the children of such servicemembers. Specifically, this information held by an agency is exempt from public record requirements.

The public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071, F.S., providing an exemption from public records requirements for certain personal identifying information of current or former servicemembers of military special operations units and their spouses and children, and the names and locations of schools and day care facilities attended by the children of such servicemembers; providing for future legislative review and repeal of the exemption.

Section 2. Provides a finding of public necessity.

Section 3. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

⁷ Congressional Research Service Report "U.S. Special Operations Forces (SOF): Background and Issues for Congress," pg. 1, May 8, 2014. Available at <http://news.usni.org/2014/05/15/document-report-congress-u-s-special-operations-forces>.

⁸ *Id.*

2. Expenditures:

See FISCAL COMMENTS

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on state and local agencies with staff responsible for complying with public records requests as staff could require training related to the expansion of the public record exemption. In addition, an agency could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article 1, 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 related to certain personal identifying information of current or former servicemembers of military special operations units and their spouses and children, and the names and locations of schools and day care facilities attended by the children of such servicemembers.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for executive branch rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue

The bill proposes to place a public record exemption related to certain personal identifying information of current or former servicemembers of military special operations units and their spouses and children, and the names and locations of schools and day care facilities attended by the children of such

servicemembers in s. 119.071(4), F.S. However, subsection (4) applies **only** to agency⁹ employees as defined in Ch. 119, F.S. It does not appear that members of a United States military special operations unit would fall within the definition of an agency employee.

Section 119.071(5), F.S., exempts other personal information, including personal information for current or former United States attorneys, assistant United States attorneys, judges of the United States Court of Appeal, United States district judges, and United States magistrates. Likewise, the provisions of this bill also exempt personal information for federal employees; and thus may be a more appropriate subsection.

Public Necessity Statement

As stated above, the Open Government Sunset Review Act provides that an exemption 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.
- Protects trade or business secrets.

As currently written, the bill's public necessity statement states that allowing public access to this identification and location information can "endanger" these servicemembers, their spouses, and their children. From the language, it appears that the public purpose or goal of the proposed exemption is to protect sensitive information that would "jeopardize an individual's safety" as described above.

Terminology

The bill, as currently written, uses the military term "special operations units." However, the United States Department of Defense Writing Style Guide uses the term "special operations forces."

Other Comments

Similar exemptions recently created require that the person submit in writing a request to exempt information from public disclosure and a written statement that the person has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public. However, this bill does not provide such a requirement.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

⁹ Section 119.011(2), F.S., defines an "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 Ch. 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.