

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Veteran & Military Affairs Subcommittee; Gaetz and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 674

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Veteran & Military Affairs Subcommittee	12 Y, 0 N, As CS	Renner	Kiner
2) Government Operations Subcommittee		Williamson	Williamson
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

The bill creates a public records exemption for the identification and location information of a current or former servicemember of a United States military special operations unit and his or her spouse and children. In order for the public records exemption to apply, the current or former servicemember must submit to the custodial agency a written request and a statement that reasonable efforts have been made to protect the information from being accessible through other means available to the public.

The bill defines the term “identification and location” information to mean the:

- Home address, telephone number, and photograph of a current or former servicemember of a United States military special operations unit;
- Home address, telephone number, photograph, and place of employment of the spouse or child of such servicemember; and
- Name and location of the school or day care facility attended by the child of such servicemember.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.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.

The bill may create a minimal fiscal impact on state and local governments. See FISCAL COMMENTS.

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 records or public meetings exemption. The bill creates a new public records 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 Records Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) 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 records 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:³

- 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.⁴

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.⁵ If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.⁶ Also, if the information is deemed to be confidential it may only be released to those persons and entities designated in statute.⁷ However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.⁸

Current Public Records Exemptions for Identification and Location Information

¹ Art I., s. 24(c), Fla. Const.

² Section 119.15, F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 119.15(3), F.S.

⁵ *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).

⁶ *Id.*

⁷ *Id.*

⁸ *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So.2d 289 (Fla. 1991).

Current law provides a public records exemption for certain identification and location information of specified current or former agency employees and their spouses and children.⁹ Information such as home addresses, telephone numbers, a spouse's employer, and a child's school or daycare facility is exempt from public records requirements.

Current law also provides a public records exemption for certain identification and location information for the following federal personnel and their spouses and children:¹⁰

- United States attorneys and assistant U.S. attorneys;
- U.S. Courts of Appeal judges;
- U.S. district judges; and
- U.S. magistrates.

In order for the exemption to apply, such attorney, judge, or magistrate must submit to the custodial agency a written request to exempt the information from public records requirements. In addition, the attorney, judge, or magistrate must submit a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.¹¹

Military Special Operations Units

Military special operations forces 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.¹²

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.¹³ SOCOM has roughly 66,000 active duty, National Guard and reserve personnel from the Navy, Army, Marines, and Air Force, as well as Department of Defense (DoD) civilians, assigned to its headquarters and various components and sub-unified commands.¹⁴

Effect of Proposed Changes

The bill creates a public records exemption for the identification and location information of current or former servicemembers of U.S. military special operations units and their spouses and children, and provides that the information is exempt¹⁵ from public records requirements. In order for the exemption to apply, such servicemember must submit to the custodial agency a written request to exempt the information from public records 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.

The bill defines the term "identification and location information" to mean the:

- Home address, telephone number, and photograph of a current or former servicemember of a U.S. military special operations unit;

⁹ See s. 119.071(4)(d), F.S.

¹⁰ See s. 119.071(5)(i), F.S.

¹¹ Section 119.071(5)(i)2.a. and b., F.S.

¹² Congressional Research Service Report "U.S. Special Operations Forces (SOF): Background and Issues for Congress," pg. 1, May 8, 2014. Available at <https://www.fas.org/sgp/crs/natsec/RS21048.pdf>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

- Home address, telephone number, photograph, and place of employment of the spouse or child of such servicemember; and
- Name and location of the school or day care facility attended by the child of such servicemember.

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., creating a public records exemption for identification and location information of current or former servicemembers of a military special operations unit and their spouse and children.

Section 2. Provides a public necessity statement.

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.

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 creation 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 new public record exemption related to certain identification and location information of a current or former servicemember of a military special operations unit and his or her spouse and children.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2015, the Veteran & Military Affairs Subcommittee adopted a strike all amendment to HB 185 and reported the bill favorably as a committee substitute. The amendment does the following:

- Moves the exemption from s. 119.071(4), F.S., to s. 119.071(5), F.S.;
- Revises the public necessity statement to clarify that the exemption protects sensitive personal information that would jeopardize an individual's safety- a revision that more closely aligns the public necessity statement to one of the public purposes listed in the Open Government Sunset Review Act;
- Requires a person to request the exemption in writing; and
- Requires a person to state in writing that they have made reasonable efforts to protect the information.

This analysis is drafted to the committee substitute as adopted by the Veteran & Military Affairs Subcommittee.