

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 313 Pub. Rec./Servicemembers of Special Operations Forces and Families  
**SPONSOR(S):** Ethics, Elections & Open Government Subcommittee, Rudman, Holcomb, and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 560

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	14 Y, 0 N	Shapiro	Darden
2) Ethics, Elections & Open Government Subcommittee	18 Y, 0 N, As CS	Shapiro	Toliver
3) State Affairs Committee			

### SUMMARY ANALYSIS

The bill creates a public records exemption for the identification and location information of current or former servicemembers of a special operations force, as well as the spouses and dependents of such persons.

In order for the exemption to apply, the servicemember or former servicemember 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 by the servicemember or former servicemember to protect the identification and location information from being accessible through other means available to the public.

The public record exemption provides that the following identification and location information is exempt from public disclosure:

- Home address, telephone number, and date of birth of a current or former servicemember of a special operations force, and the telephone number associated with the personal communication device of a current or former servicemember of a special operations force;
- Home address, telephone number, and date of birth of the spouse or dependent of a current or former servicemember of a special operations force, and the telephone number associated with such spouse's or dependent's personal communication device; and
- Name and location of a school attended by the spouse of a current or former servicemember of a special operations force, or a school or day care facility attended by a dependent of a current or former servicemember of a special operations force.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill may have negative, but likely insignificant, fiscal impact on state and local governments. See Fiscal Comments.

**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 a public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Public Records

Article I, section 24(a) of the Florida 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.<sup>1</sup> The Legislature, however, may provide by general law for exemption from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>2</sup>

Public policy regarding access to government records is also addressed by statute. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.<sup>3</sup> Furthermore, the Open Government Sunset Review Act<sup>4</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>5</sup> An identifiable public purpose is served if the exemption meets 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; or
- Protect trade or business secrets.<sup>6</sup>

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2<sup>nd</sup> of the fifth year following enactment, unless the Legislature reenacts the exemption.

##### Current Public Records Exemptions for Identification and Location Information

Current law provides several public record exemptions for certain identification and location information of specified current or former agency employees and their spouses and children.<sup>7</sup> Information and location information typically includes the home addresses,<sup>8</sup> telephone numbers,<sup>9</sup> dates of birth, and photographs of specified agency employees and their spouses and children. Additionally, the places of employment of the spouses and children of the specified agency employees as well as the names and locations of schools and day care facilities attended by those children are exempt from public record requirements.

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<sup>1</sup> Art. I, s. 24(a), FLA. CONST.

<sup>2</sup> Art. I, s. 24(c), FLA. CONST.

<sup>3</sup> A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the State Constitution. See s. 119.011(8), F.S.

<sup>4</sup> S. 119.15, F.S.

<sup>5</sup> S. 119.15(6)(b), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> See s. 119.071(4)(d), F.S.

<sup>8</sup> The term "home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address. S. 119.071(4)(d)1.a., F.S.

<sup>9</sup> The term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices. S. 119.071(4)(d)1.b., F.S.

Current law also provides a public record exemption for certain identification and location information of the following federal personnel and their spouses and children:<sup>10</sup>

- U.S. attorneys and assistance U.S. attorneys;
- U.S. Courts of Appeal judges;
- U.S. District Court judges;
- U.S. Magistrates.

In order for the exemption to apply, the attorney, judge, or magistrate must submit to the custodial agency a written request to exempt the information from public records requirements.<sup>11</sup> 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.<sup>12</sup>

### Effect of Proposed Changes

The bill creates a public record exemption for the identification and location information of current or former servicemembers of a special operations force,<sup>13</sup> and their spouses and dependents. Specifically, the public record exemption provides that the following identification and location information is exempt<sup>14</sup> from public disclosure:

- Home address, telephone number, and date of birth of the current or former servicemember of a special operations force, and the telephone number associated with the personal communication device of a current or former servicemember of a special operation force;
- Home address, telephone number, and date of birth of the spouse or dependent of a current or former servicemember of a special operations force, and the telephone number associated with such spouse's or dependent's personal communication device; and
- Name and location of a school attended by the spouse of a current or former servicemember of a special operations force, or a school or day care facility attended by a dependent of a current or former servicemember of a special operations force.

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 and 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 provides the constitutionally required public necessity statement.<sup>15</sup> Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2028, unless reenacted by the Legislature.

### B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspecting or copying of records.

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<sup>10</sup> S. 119.071(5)(i), F.S.

<sup>11</sup> S. 119.071(5)(i)2.a., F.S.

<sup>12</sup> S. 119.071(5)(i)2.b., F.S.

<sup>13</sup> The bill defines "special operations forces" to mean those active and reserve component forces of the military services designated by the Secretary of Defense and specifically organized, trained, and equipped to conduct and support special operations. The term includes, but is not limited to, servicemembers of the United States Army Special Forces and the United States Army 75th Ranger Regiment; the United States Navy SEALs and Special Warfare Combatant-Craft Crewmen; the United States Air Force Combat Control, Pararescue, and Tactical Air Control Party specialists; the United States Marine Corps Critical Skills Operators; and any other component of the United States Special Operations Command approved by the commission.

<sup>14</sup> There is a difference between records the Legislature designates 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, Aug. 1, 1985.

<sup>15</sup> Art. I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill could create a negative, but likely insignificant, fiscal impact on state and local agencies as staff for those entities could require training related to the public record exemption. It is unclear whether the staff will experience increase in workload due to the number of those current or former servicemembers of a special operations force who may take advantage of the public records exemption. The costs should 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:

Not applicable. The bill does not 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 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 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 creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that

as terrorist groups have threatened servicemembers and their families and have encouraged terrorist sympathizers to harm servicemembers and their families within the United States, the Legislature finds that allowing continued public access to the identification and location information of current or former servicemembers and their families jeopardizes the safety of servicemembers, their spouses, and their dependents.

#### 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 creates a public records exemption for the identification and location information of current or former members of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, or the National Guard, who served after September 11, 2001, as well as the spouses and dependents of such persons. The exemption is limited to those servicemembers who served after September 11, 2001, to prevent potential harm to those persons and their families by terrorists or terrorist sympathizers. As such, it 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:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 29, 2023, the Ethics, Elections & Open Government Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment narrowed the scope of the exemption to only encompass current and former servicemembers of a special operations force and their families. Additionally, the amendment removed a provision protecting the place of employment of a spouse or dependent of a current or former servicemember of a special operations force from disclosure.

This analysis is drafted to the committee substituted as approved by the Ethics, Elections & Open Government Subcommittee.