

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 313 Pub. Rec./Military Personnel and their Families

SPONSOR(S): State Affairs Committee, 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	20 Y, 0 N, As CS	Shapiro	Williamson

SUMMARY ANALYSIS

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. However, it does not provide a public record exemption for certain United States military personnel.

The bill creates a public record exemption for the following identification and location information of current or former military personnel and their spouses and dependents:

- Home addresses, telephone numbers, and dates of birth of current or former military personnel, and the telephone numbers associated with the personal communication devices of such personnel;
- Home addresses, telephone numbers, and dates of birth of the spouses and dependents of current or former military personnel, and the telephone numbers associated with the personal communication devices of such spouses and dependents; and
- Names and locations of schools attended by the spouses of current or former military personnel, and schools and day care facilities attended by dependents of such personnel.

The bill defines "military personnel" to mean persons employed by the U.S. Department of Defense who have been authorized to access information deemed "secret" or "top secret" by the Federal Government, as well as current or former servicemembers of a special operations force.

In order for the exemption to apply, the military personnel 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 by the military personnel member to protect the identification and location information from being accessible through other means available to the public.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and saved from repeal by the Legislature.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 a negative, but likely insignificant, fiscal impact on state and local governments.

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, s. 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.¹ 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.²

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.³ Furthermore, the Open Government Sunset Review Act⁴ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose that is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.⁵ 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.⁶

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 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.

Current Public Record 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.⁷ Information and location information typically includes the home addresses,⁸ telephone numbers,⁹ 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.

¹ Art. I, s. 24(a), FLA. CONST.

² Art. I, s. 24(c), FLA. CONST.

³ 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.

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ *Id.*

⁷ See s. 119.071(4)(d), F.S.

⁸ 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.

⁹ 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 United States attorneys and assistant U.S. attorneys, U.S. Courts of Appeal judges, U.S. District Court judges, and U.S. Magistrates, as well as their spouses and children.¹⁰ 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 record requirements.¹¹ 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.¹²

A similar public record exemption for the identification and location information of current or former members of the U.S. Armed Forces, their reserve components, and the National Guard, who served after September 11, 2001, as well as their spouses and children used to exist. However, that exemption sunset on October 2, 2020.¹³

Effect of Proposed Changes

The bill creates a public record exemption for the identification and location information of current and former military personnel and their spouses and dependents. The bill defines “military personnel” to mean persons employed by the U.S. Department of Defense who have been authorized to access information deemed “secret” or “top secret” by the Federal Government, as well as current or former servicemembers of a special operations force.¹⁴

Specifically, the public record exemption provides that the following identification and location information is exempt¹⁵ from public record requirements:

- Home addresses, telephone numbers, and dates of birth of current and former military personnel, and the telephone numbers associated with the personal communication devices of such personnel;
- Home addresses, telephone numbers, and dates of birth of the spouses and dependents of current and former military personnel, and the telephone numbers associated with the personal communication devices of such spouses and dependents; and
- Names and locations of schools attended by the spouses of current and former military personnel, and schools and day care facilities attended by dependents of such personnel.

In order for the exemption to apply, the military personnel member 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.¹⁶ Pursuant to the Open Government Sunset Review Act, the bill provides that the exemption will repeal on October 2, 2028, unless reenacted by the Legislature.

¹⁰ S. 119.071(5)(i), F.S.

¹¹ S. 119.071(5)(i)2.a., F.S.

¹² S. 119.071(5)(i)2.b., F.S.

¹³ Formerly s. 119.071(5)(k), F.S.

¹⁴ The bill defines “special operations force” 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 U.S. Army Special Forces and the U.S. Army 75th Ranger Regiment; the U.S. Navy SEALs and Special Warfare Combatant-Craft Crewmen; the U.S. Air Force Combat Control, Pararescue, and Tactical Air Control Party specialists; the U.S. Marine Corps Critical Skills Operators; and any other component of the U.S. Special Operations Command approved by the commission.

¹⁵ 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.

¹⁶ Art. I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

B. SECTION DIRECTORY:

- Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspecting or copying of records.
- 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 an increase in workload due to the number of military personnel who may take advantage of the public record 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 military personnel and their families and have encouraged terrorist sympathizers to harm military personnel 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 military personnel and their families jeopardizes the safety of these military personnel, 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 record exemption for the identification and location information of current or former military personnel, as well as the spouses and dependents of such persons. The exemption is limited to those military personnel who serve or served in a special operations force, or who are or were employed by the U.S. Department of Defense and authorized to access information deemed "secret" or "top secret" by the Federal Government, 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.

On April 19, 2023, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment expanded the scope of the exemption to encompass current and former persons employed by the U.S. Department of Defense who have been authorized to access information deemed "secret" or "top secret" by the Federal Government, and their families.

This analysis is drafted to the committee substituted as approved by the State Affairs Committee.