

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1345 w/CS Exemption from Public Records and Public Meetings Requirements
SPONSOR(S): Sorenson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Commerce</u>	<u>19 Y, 0 N w/CS</u>	<u>Billmeier</u>	<u>Billmeier</u>
2) <u>State Administration</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The Department of Defense is engaged in a process, commonly known as "BRAC", during which military installations across the nation will be reviewed to determine whether functions and bases can be consolidated or closed. The final decision on which bases to realign or close must be made by the President on November 7, 2005, and the process will conclude in 2006. In 2003, the Governor created the "Governor's Advisory Council on Base Realignment and Closure" to develop a plan to protect Florida's military bases from realignment or closure. The Office of Tourism, Trade, and Economic Development (OTTED) provides staffing to the Advisory Council.

HB 1345 creates an exemption from the public records and public meetings requirements of Art. I, s. 24, Fla. Const., for certain records and meetings of the Governor's Advisory Council on Base Realignment and Closure, Enterprise Florida, Inc., and the Office of Tourism, Trade, and Economic Development. Materials exempted under this bill include:

- (1) materials that relate to strengths and weaknesses of military installations or military missions in Florida relative to the selection criteria for the realignment and closure of military bases and missions;
- (2) materials that relate to strengths and weaknesses of military installations or military missions in other states or territories and the vulnerability of such installations or missions to base realignment or closure; and
- (3) materials that relate to the state's strategy to retain its military bases.

This bill also provides that meetings or portions of meetings of OTTED or the Advisory Council at which material confidential and exempt from disclosure are exempt from open meeting requirements. Any records generated during such meetings are also confidential and exempt.

The public meetings and records exemptions created by this bill are repealed on May 31, 2006, unless reenacted by the Legislature.

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

This bill takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1345a.com.doc
DATE: March 17, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

This bill creates an exemption from the public records and public meetings requirements of Art. I, s. 24, Fla. Const., for certain records and meetings of the Governor’s Advisory Council on Base Realignment and Closure and the Office of Tourism, Trade, and Economic Development.

Background

The Department of Defense has once again embarked on another round of base realignments and closures, commonly referred to as “BRAC,” during which military installations across the nation will be reviewed to determine whether functions and bases can be consolidated or closed. The BRAC process reflects a desire to eliminate excess capacity, experience the savings from that reduction in capacity, and fund higher priority weapon platforms and troop training. There have been four BRAC rounds between 1988 and 1995. During the 1993 round, four Florida bases were closed.¹ The final decision on which bases to realign or close must be made by the President on November 7, 2005.

In 2003, the Governor created the “Governor’s Advisory Council on Base Realignment and Closure” (“Advisory Council”) to develop a plan to protect Florida’s military bases from realignment or closure.² The mission of the Advisory Council is: (1) to keep Florida’s military installations off the base closure list; (2) to know the capabilities of Florida’s military installations for realignment potential from other locations; and (3) to support Florida’s local community BRAC efforts by acting as a coordinator to the Governor’s office.³ The Office of Tourism, Trade, and Economic Development (OTTED), created within the Executive Office of the Governor, is charged with creating economic development strategies for all Floridians.⁴ OTTED provides staffing to the Advisory Council.

According to representatives of Enterprise, Florida, Inc., some of the information gathered and discussions held relating to Florida’s strategies to retain military bases would be valuable to other states competing with Florida for bases and programs. However, much of the information gathered by the Governor’s Office or the Advisory Council would be public under Art. I, s. 24, Fla. Const.

¹ Florida lost the Naval Aviation Depot Pensacola, the Naval Aviation Station Cecil Field Jacksonville, the Naval Training Center Orlando, and Homestead Air Force Base.

² See Press Release, *Governor Bush Begins Proactive Campaign to Save Florida’s Military Installations from 2005 Federal Base Closures*, March 10, 2003.

³ Presentation by the Office of Tourism, Trade, and Economic Development.

⁴ See s. 14.2015, F.S.

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida 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.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995 provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: (1) allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; (2) protecting 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 (3) protecting trade or business secrets.

Effect of Proposed Changes

This bill provides that the following materials held by Enterprise Florida, Inc., OTTED or by the Advisory Council is confidential and exempt from disclosure under Art. 1, s. 24(a), Fla. Const.:

- (1) materials that relate to strengths and weaknesses of military installations or military missions in Florida relative to the selection criteria for the realignment and closure of military bases and missions under the United States Department of Defense Base Realignment and Closure 2005 process, which concludes on April 15, 2006;
- (2) materials that relate to strengths and weaknesses of military installations or military missions in other states or territories and the vulnerability of such installations or missions to base realignment or closure under the United States Department of Defense Base Realignment and Closure 2005 process and any agreements or proposals to relocate or realign military units and missions from other states or territories; and
- (3) materials that relate to the state's strategy to retain its military bases during the United States Department of Defense Base Realignment and Closure 2005 process and any agreements or proposals to relocate or realign military units and missions.

This bill also provides that meetings or portions of meetings of OTTED or the Advisory Council at which material confidential and exempt from disclosure are exempt from the open meeting requirements of Art. 1, s. 24 and s. 286.011, F.S. Any records generated during such meetings are also confidential and exempt.

This bill permits public employees to inspect and copy records made confidential and exempt by this bill but requires such employees to maintain the confidential and exempt status. A public employee who violates the provisions of this bill commits a first degree misdemeanor.

The public meetings and records exemptions created by this bill are repealed on May 31, 2006, unless reenacted by the Legislature.

This bill takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1. Creates s. 288.982, F.S., providing exemptions from public records and meetings requirements for certain records and meetings of the Governor's Advisory Council on Base Realignment and Closure, Enterprise Florida, Inc., and the Office of Tourism, Trade, and Economic Development.

Section 2. Provides a statement of public necessity for creating the exemption to the public records and meetings requirements.

Section 3. Provides that this bill becomes effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to impact revenues of state government.

2. Expenditures:

This bill does not appear to impact expenditures of state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to impact revenues of local governments.

2. Expenditures:

This bill does not appear to impact expenditures of local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have an economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. This bill requires a two-thirds vote for final passage. This bill can be reported favorably from a committee of reference by majority vote.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Commerce considered this bill on March 17, 2004, and adopted a "strike everything" amendment. The bill exempted certain records held by the Governor's Advisory Council on Base Realignment and Closure and the Office of Tourism, Trade, and Economic Development from public records disclosure requirements. The amendment exempted the same types of records if held by Enterprise Florida, Inc. The amendment also made technical changes throughout the bill. The bill, as amended, was reported favorably with a committee substitute.