

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 185 Public Records/Active Duty Servicemembers and Families

**SPONSOR(S):** Local & Federal Affairs Committee; Government Operations Subcommittee; 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	12 Y, 0 N, As CS	Williamson	Williamson
3) Local & Federal Affairs Committee	14 Y, 0 N, As CS	Renner	Kiner

### SUMMARY ANALYSIS

Current law provides a public records exemption for certain identification and location information of certain federal attorneys, judges, and magistrates, and their spouses and children. It does not provide a public records exemption for active duty servicemembers of the United States Armed Forces, Reserve Forces, or National Guard.

The bill creates a public records exemption for the identification and location information of current or former active duty servicemembers of the U.S. Armed Forces, Reserve Forces, or National Guard who served after September 11, 2001, and their spouses and dependents. In order for the exemption to apply, the current or former servicemember must submit to the custodial agency a written request and a written statement that reasonable efforts had been made 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 date of birth of a servicemember, and the telephone number associated with a servicemember's personal communication device;
- Home address, telephone number, date of birth, and place of employment of the spouse or dependent of such servicemember, and the telephone number associated with such spouse's or dependent's personal communication device; and
- Name and location of the school attended by the spouse, or the school or day care facility attended by the dependent of such servicemember.

The bill provides for retroactive application of the public records exemption. The bill takes effect upon becoming law.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.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 have a fiscal impact on state and local governments. See FISCAL COMMENTS.

**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.<sup>1</sup>

The Open Government Sunset Review Act<sup>2</sup> 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:<sup>3</sup>

- 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 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>4</sup>

##### Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those that have been determined to be confidential and exempt.<sup>5</sup> If the Legislature has determined the information to be confidential and exempt then the information is not subject to inspection by the public.<sup>6</sup> In addition, if the information is deemed to be confidential and exempt it may be released only to those persons and entities designated in statute.<sup>7</sup> However, the agency is not prohibited from disclosing the records in all circumstances where the records are exempt only.<sup>8</sup>

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<sup>1</sup> Art I., s. 24(c), Fla. Const.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 119.15(3), F.S.

<sup>5</sup> *WFTV, Inc. v. School Board of Seminole County*, 874 So.2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004).

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

<sup>7</sup> *Id.*

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

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

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.<sup>9</sup> 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 of the following federal personnel and their spouses and children:<sup>10</sup>

- 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, the 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.<sup>11</sup>

Current law does not provide similar public records exemptions for active duty<sup>12</sup> servicemembers<sup>13</sup> of the U.S. Armed Forces,<sup>14</sup> Reserve Forces, or National Guard.<sup>15</sup>

### **Effect of Proposed Changes**

The bill creates a public records exemption for the identification and location information of current or former active duty servicemembers of the U.S. Armed Forces, Reserve Forces, or National Guard who served after September 11, 2001, and their spouses and dependents, and provides that the information is exempt from public records requirements. In order for the exemption to apply, the current or former 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 date of birth of a servicemember, and the telephone number associated with a servicemember's personal communication device;
- Home address, telephone number, date of birth, and place of employment of the spouse or dependent of such servicemember, and the telephone number associated with such spouse's or dependent's personal communication device; and
- Name and location of the school attended by the spouse, or the school or day care facility attended by the dependent of such servicemember.

The bill also provides for retroactive application of the public records exemption.

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<sup>9</sup> See s. 119.071(4)(d), F.S.

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

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

<sup>12</sup> Section 250.01(1), F.S., defines the term "active duty" to mean full-time duty in active military service of the U.S. It includes federal duty such as full-time training, annual training, and attendance while a person is in active military service or in a school designated as a service school by law or by the secretary of the applicable military department. The term also includes the period during which a person in active military service is absent from duty because of illness, being wounded, being on leave, or other lawful cause. The term does not mean full-time duty in the National Guard.

<sup>13</sup> Section 250.01(19), F.S., defines the term "servicemember" to mean any person serving as a member of the U.S. Armed Forces on active duty or state active duty and all members of the Florida National Guard and U.S. Reserve Forces.

<sup>14</sup> Section 250.01(4), F.S., defines the term "armed forces" to mean the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard.

<sup>15</sup> Section 250.01(13), F.S., defines the term "National Guard" to mean the Army National Guard and the Air National Guard.

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 active duty servicemembers of the U.S. Armed Forces, Reserve Forces, or National Guard who served after September 11, 2001, and their spouse and children.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date upon becoming law.

**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 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. It is unclear whether the staff will experience an increase in workload due to the number of those current or former active servicemembers that served after September 11, 2001, who may take advantage of the public records exemption. In addition, an agency could incur costs associated with redacting the exempt information prior to releasing a record. 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:

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 records 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 records 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 records exemption related to certain identification and location information of a current or former active duty servicemember of the U.S. Armed Forces, Reserve Forces, or National Guard.

#### 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.

On March 24, 2015, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment revises the definition of "identification and location information" to include dates of birth. It also expands the public record exemption to make it applicable to any current or former active duty service member of the U.S. Armed Forces, Reserve Forces, or National Guard, instead of military special operations servicemembers only.

On April 1, 2015, the Local & Federal Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment does the following:

- Removes the term “photograph” from the definition of “identification and location information”;
- Includes the telephone number associated with a servicemember, his or her spouse, or dependent’s personal communication device in the definition of “identification and location information”;
- Changes the term “child” to “dependent”;
- Includes the name and location of the school attended by the spouse in the definition of “identification and location information”;
- Revises the definition of “servicemember” to mean a current or former member of the U.S. Armed Services, Reserves, or National Guard who served after September 11, 2001; and
- Provides for retroactive application.

This analysis is drafted to the committee substituted as approved by the Local & Federal Affairs Committee.