

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs, Space, and Domestic Security

BILL: CS/SB 674

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Evers

SUBJECT: Public Records/Military Special Operations Unit Service Members

DATE: March 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 674 creates a public records exemption for certain identification and location information of current and former servicemembers of U.S. military special operations units and their spouses and children.

The public records exemption established in the bill is subject to the Open Government Sunset Review Act and will repeal on October 2, 2020, unless reviewed and saved from repeal by the Legislature.

The bill contains a statement of public necessity as required by the State Constitution.

Because this bill creates a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

II. Present Situation:

Public Records Laws

The State Constitution offers every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the

state, or of persons acting on their behalf.¹ Records kept by the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created by law or in the Constitution are all subject to public disclosure.²

Only the Legislature may create an exemption to public records requirements.³ Records are designated by the Legislature as either 'exempt' or 'confidential and exempt'. A record classified as exempt from public disclosure may be disclosed under certain circumstances.⁴ If the Legislature designates a record as confidential and exempt from public disclosure, a public records custodian may not release the record to anyone other than the persons or entities specifically designated in the statutory exemption.⁵

An exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁶ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁷ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁸

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.⁹ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁰

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ FLA. CONST., art. I, s. 24(c).

⁴ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (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 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)

⁵ Op. Att'y Gen. Fla. 85-62 (1985)

⁶ FLA. CONST., art. I, s. 24(c).

⁷ The bill may, however, contain multiple exemptions that relate to one subject.

⁸ FLA. CONST., art. I, s. 24(c).

⁹ Section 119.15, F.S.

¹⁰ Section 119.15(3), F.S.

Current Exemptions from Public Records Requirements in s. 119.071, F.S.

Section 119.071, F.S., authorizes general exemptions to public records requirements. Section 119.071(4), F.S., exempts certain personal identification and location information for specified current or former agency personnel¹¹ and their spouses and children. Information such as home addresses, telephone numbers, spouse employer, and children's school or day care facility for the following current and former agency personnel are exempt from public disclosure:

- Law enforcement and specified agency investigative personnel;¹²
- Certified firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Department of Juvenile Justice direct-care personnel;
- Public defenders and criminal conflict and civil regional counsel;
- Department of Business and Professional Regulation investigators and inspectors; and
- County tax collectors.¹³

Additionally, s. 119.071(5), F.S., authorizes a public records exemption for certain identification and location information for the following individuals and their spouses and children:¹⁴

- 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 an agency that has custody of the protected information a written request to exempt the information from public disclosure and a written statement that the individual has made a reasonable effort to protect such information from being accessible through other means available to the public. The identification and location information protected under this exemption includes:¹⁵

- Home address, telephone number, and photograph of such attorney, judge, or magistrate and their spouse and child;
- Places of employment of a spouse and child, and
- Name and location of the school or day care facility attended by a child.

¹¹ Section 119.011(2), F.S., defines an "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of Ch. 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

¹³ Public records exemptions do not take immediate effect for those who are eligible. The individual must actively engage with the local and state agencies that maintain their personal records to ensure that their right to an exemption is known. The county tax collectors offices is one example of where an individual may exercise their right to an exemption. A form is provided upon request, which the office then processes and keeps on file.

¹⁴ Section 119.071(5)(i), F.S.

¹⁵ Section 119.071(5)(i)1., F.S.

The public necessity statements for these exemptions suggest that persons engaged in the specified occupations are at risk of becoming objects of public ire, because the specified occupations require decisions, actions, or information-sharing that could elicit significant emotional reactions from the public. In extreme instances, those emotional reactions could lead to acts of violence against the agency personnel and their families.¹⁶

Military Special Operations Units

Special Operations Forces (SOF) 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. The U.S. Special Operations Command (USSOCOM), headquartered at MacDill Air Force Base in Tampa, oversees the training, doctrine, and equipping of all U.S. SOF units.¹⁷ USSOCOM'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 and the Joint Special Operations Command, which is a sub-unified command of USSOCOM.¹⁸ USSOCOM currently has about 66,000 active duty, National Guard, and reserve personnel assigned to its headquarters, its four components, and sub-unified commands nationwide.¹⁹

Additionally, Florida is the home to other SOF groups such as the 7th Special Operations Group at Eglin Air Force Base in Okaloosa County; the Air Force Special Operations Command, the 1st Special Operations Wing, the 720th Special Tactics Group, and the U.S. Air Force Special Operations School and Training Center at Hurlburt Field in Okaloosa County; and the Air Force Reserve Command's 919th Special Operations Wing at Duke Field in Okaloosa County.²⁰

III. Effect of Proposed Changes:

The bill amends s. 119.071(5), F.S., to create an exemption to the public records requirements in s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution for current or former servicemembers of United States military special operations units and their spouses and children. Specifically, the following identification and location information held by an agency is exempt from public record requirements:

- The home address, telephone number, and photograph of a current or former servicemember of a special operations unit;
- The home address, telephone number, photograph, and places of employment of spouses of such servicemember; and
- The home address, telephone number, photograph, places of employment, and locations of schools and day care facilities attended by the children of such servicemember.

¹⁶ *i.e.*, See Ch. 2010-171, s. 2, Laws of Fla.

¹⁷ Congressional Research Service Report "U.S. Special Operations Forces (SOF): Background and Issues for Congress," p. 1, <http://fas.org/sgp/crs/natsec/RS21048.pdf> (last visited on February 26, 2015).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 3-4

The exemption only applies if the current or former servicemember submits in writing to the agency that has custody of the identification and location information a:

- Request to exempt such information from public disclosure; and
- 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 a statement of public necessity as required by the State Constitution. The public necessity statement provides that allowing the identification and location information of current or former servicemembers of United States military special operations units and their families can endanger these servicemembers, their spouses, and their children.

This exemption is subject to the Open Government Sunset Review Act and will stand repealed on October, 2, 2020, unless reviewed and reenacted by the Legislature.

The bill provides an effective date of October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

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 record or public meeting exemption. The bill creates a public record exemption for the identification and location information of current or former servicemembers of the United States military special operations units, their spouses, and the children of such servicemembers; 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 public record exemption for identification and location information of current or former servicemembers of the United States military special operations units, their spouses, and the children of such servicemembers; 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 public record exemption limited to the identification and location information named in the bill for current or former servicemembers of the United States military special operations units, their spouses, and the children of such servicemembers. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on state and local agencies with staff responsible for complying with public record requests, as staff could require training related to expansion of the public record exemption. In addition, an agency may incur costs associated with redacting exempt information prior to releasing a record. The costs, however, would likely be absorbed as part of the day-to-day responsibilities of the staff of the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military and Veterans Affairs, Space, and Domestic Security on March 4, 2015:

The committee substitute:

- 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; and
- Requires a person to request the exemption in writing and state in writing that they have made reasonable efforts to protect the information for the exemption to apply.

- B. **Amendments:**

None.