

their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ *Id.*

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "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 this chapter, 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." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the purpose of the exemption overrides the Florida's public policy strongly favoring open government.

The OGSR also requires specified questions to be considered during the review process.¹⁷ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁹

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

Section 119.071(4), F.S., exempts personal identification and location information for specified current or former state or local government personnel, their spouses and children. Information such as home addresses, telephone numbers, a spouse's employer, and children's school or day

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

care facility for current and former agency personnel are exempt from public disclosure. The employee must submit a written request for the exemption to be effective.²⁰

Additionally, s. 119.071(5), F.S., authorizes a public records exemption for certain identification and location information for the following federal personnel, their spouses and children:²¹

- U.S. attorneys and assistant U.S. attorneys;
- U.S. Courts of Appeal judges;
- U.S. district judges; and
- U.S. magistrates.

The identification and location information protected under this exemption includes:²²

- 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.

In order for the exemption to apply, a current or former federal 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. In addition, the individual must submit a written statement that he or she has made a reasonable effort to protect such information from being accessible through other means available to the public.

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.²³ 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.²⁴ 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.²⁵

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

²⁰ Section 119.071(4)(d)(3), F.S.

²¹ Section 119.071(5)(i), F.S.

²² Section 119.071(5)(i)1., F.S.

²³ 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).

²⁴ *Id.*

²⁵ *Id.*

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.²⁶

Threats to Servicemembers and their Families

The Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) issued a Joint Intelligence Bulletin warning servicemembers that the Islamic State of Iraq and Levant (ISIL) has made “repeated calls for supporters in the United States to pledge an oath of obedience to ISIL and to attack military, law enforcement, security, and intelligence personnel in the Homeland.”²⁷ A group claiming to be sympathizers of the Islamic State of Iraq and Syria (ISIS)²⁸ hacked into the U.S. military's Central Command's Twitter account and stated that they were watching American soldiers, their wives and children.²⁹ Because of those threats, spouses of a Special Forces service members are reducing the information they place on social media.³⁰ On March 21, 2015, the media reported that ISIL posted on the internet the names, photographs, and addresses of approximately 100 servicemembers that it wanted killed.³¹ The posted information appeared to have come from public records, the internet and Department of Defense reports.³² Federal and military law enforcement agencies are investigating the matter, and the Department of Defense has been contacting the named servicemembers.³³

III. Effect of Proposed Changes:

The bill amends s. 119.071(5), F.S., to create an exemption from 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:

²⁶ *Id.* at 3-4

²⁷ Joint Intelligence Bulletin titled *Islamic State of Iraq and the Levant and Its Supporters Encourage Attacks Against Military Personnel* dated November 30, 2014, on file with the Committee on Governmental Oversight and Accountability. See also: *ISIS Threat at Home: FBI Warns US Military About Social Media Vulnerabilities*. (December 1, 2014), <http://abcnews.go.com/International/isis-threat-home-fbi-warns-us-military-social/story?id=27270662> (last viewed March 10, 2015)

²⁸ ISIL and ISIS are the same terrorist group but have been referred to in differently over time by the media and the government. See *ISIS, ISIL Or Islamic State: What's In a Name?* National Public Radio September 12, 2014. <http://www.npr.org/blogs/parallels/2014/09/12/347711170/isis-isil-or-islamic-state-whats-in-a-name> (last viewed March 26, 2015.)

²⁹ *U.S. Central Command Twitter Account suspended After Apparent ISIS Hack*. U.S. News and World Report (January 12, 2015) <http://www.usnews.com/news/articles/2015/01/12/us-central-command-twitter-account-suspended-after-apparent-isis-hack> (last visited March 10, 2015.)

³⁰ *After ISIS Twitter threat, military families rethink online lives*. <http://www.cnn.com/2015/01/14/us/social-media-military-isis/> (last visited March 10, 2015).

³¹ *ISIS Urges Sympathizers to Kill U.S. Service Members It Identifies on Website*, New York Times (March 21, 2015) http://www.nytimes.com/2015/03/22/world/middleeast/isis-urges-sympathizers-to-kill-us-service-members-it-identifies-on-website.html?_r=0 (last view March 24, 2015.)

³² *Id.*

³³ “Purported ISIS Group Posts Personal Details of 100 U.S. Military Service Members” ABC News (March 21, 2015). <http://abcnews.go.com/Politics/purported-isis-group-posts-personal-details-100-us/story?id=29811503> (last viewed March 24, 2015.)

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

The exemption only applies if the current or former servicemember submits a written request for the exemption and provides a written statement that the servicemember has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public. The servicemember must submit these statements to each agency which holds his or her information, and the servicemember must assert the exemption on behalf of his or her spouse and child.

This bill does not provide for retroactive application of this exemption. This is problematic because information that is public before the bill goes into effect, such as a home address, will remain 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 public necessity statement provides that Special Forces servicemembers perform critical and dangerous operations and that public access to identifying and location information endangers Special Forces servicemembers.

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 is 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, as staff may require training related to this new public record exemption. The costs, however, would likely be absorbed as part of the day-to-day responsibilities of the staff of the agency.

VI. Technical Deficiencies:

The bill creates a definition of “identification and location information” which includes photographs. When servicemembers assert that they wish to have their information exempt, they must state in writing that they have made reasonable efforts to protect their “identification and location information.” This is problematic because social media sites usually contain photographs. If servicemembers post photographs of themselves and their families on public social media sites they may be unable to truthfully state that they kept their identification and location information private.

VII. Related Issues:

The bill does not address how public records custodian will be able to verify that a servicemember is in a special operations unit. The servicemember will probably have to obtain documentation from the military confirming that he or she or was in a Special Forces unit and present it to an agency's records custodian in order to assert the exemption.³⁴

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 he has made reasonable efforts to protect the information for the exemption to apply.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁴ A Certificate of Release or Discharge from Active Duty (DD 214 Form) indicates if a veteran was a member of a Special Forces unit. Email from Florida Department of Veterans Affairs, on file with the Senate Committee on Governmental Oversight and Accountability.