

**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.)

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

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BILL: SB 674

INTRODUCER: Senator Evers

SUBJECT: Public Records/Military Special Operations Unit Service Members

DATE: March 3, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanders	Ryon	MS	<b>Pre-meeting</b>
2.			GO	
3.			RC	

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**I. Summary:**

SB 674 creates a public records exemption for certain personal 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.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

Only the Legislature may create an exemption to public records requirements.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>6</sup> 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 provisions<sup>7</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>8</sup>

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>9</sup> 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.<sup>10</sup>

### **Current Exemptions Relating to Agency Personnel in s. 119.071(4)(d), F.S.**

Section 119.071(4)(d), F.S., currently provides public records exemptions<sup>11</sup> for specified personal identification and location information of the following current or former agency personnel,<sup>12</sup> as well as for specified personal identification and location information of their spouses and children, including the following:

- Law enforcement and specified agency investigative personnel;<sup>13</sup>
- Certified firefighters;
- Justices and judges;

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<sup>3</sup> FLA. CONST., art. I, s. 24(c).

<sup>4</sup> *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)

<sup>5</sup> Op. Att’y Gen. Fla. 85-62 (1985)

<sup>6</sup> FLA. CONST., art. I, s. 24(c).

<sup>7</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>8</sup> FLA. CONST., art. I, s. 24(c).

<sup>9</sup> Section 119.15, F.S.

<sup>10</sup> Section 119.15(3), F.S.

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> Included in this category are the following: active or former sworn or civilian law enforcement personnel, including Department of Corrections officers and correctional probation officers, Department of Children and Families abuse and exploitation investigators, Department of Health child abuse investigators, and Department of Revenue collection and enforcement personnel.

- 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.

Although there is some inconsistency among the types of information exempted,<sup>14</sup> all of the exemptions protect the following information:

- The home addresses and telephone numbers of the agency personnel;
- The home addresses, telephone numbers, and places of employment of the spouses and children of the agency personnel; and
- The names and locations of schools and day care facilities attended by the children of the agency personnel.

The public necessity statements for these agency personnel public-records exemptions suggest that the 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.<sup>15</sup>

### **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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

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<sup>14</sup> Some of the exemptions also protect photographs, dates of birth, and names of agency personnel and their spouses and children. Additionally, all social security numbers held by an agency are confidential and exempt from public disclosure pursuant to s. 119.071(5)(a)5., F.S.

<sup>15</sup> *i.e.*, See Ch. 2010-171, s. 2, Laws of Fla.

<sup>16</sup> 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).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

Additionally, Florida is the home to other SOF groups such as the 7<sup>th</sup> Special Operations Group at Eglin Air Force Base in Okaloosa County; the Air Force Special Operations Command, the 1<sup>st</sup> Special Operations Wing, the 720<sup>th</sup> 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 919<sup>th</sup> Special Operations Wing at Duke Field in Okaloosa County.<sup>19</sup>

### III. Effect of Proposed Changes:

This bill creates 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 information held by an agency is exempt from public record requirements:

- The home addresses, telephone numbers, dates of birth, and photographs of current or former special operations units;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of spouses of such servicemember; and
- The names, home addresses, telephone numbers, dates of birth, and locations of schools and day care facilities attended by the children of such servicemember.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity statement provides that allowing public access to the names, addresses, and identifying 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 personal and identifying 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.

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<sup>19</sup> *Id.* at 3-4

**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 personal and identifying 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 personal and identifying 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 Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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