

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7027 PCB OTM 20-08 OGSR/ Servicemembers and Families
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Andrade
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 7010

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	12 Y, 0 N	Smith	Smith
1) State Affairs Committee	22 Y, 0 N	Smith	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for identification and location information of current or former members of the United States Armed Forces, their reserve components, or the National Guard, who served after September 11, 2001, and their spouses and dependents. In order for the exemption to apply, the servicemember or former servicemember must submit to the custodial agency a written request that his or her information be exempt and a written statement that reasonable efforts have been made to protect the identification and location information from being accessible through other means available to the public.

The public record exemption provides that the following "identification and location information" is exempt from public disclosure:

- Home address, telephone number, and date of birth of a servicemember or former servicemember;
- Home address, telephone number, date of birth, and place of employment of the spouse or dependent of a servicemember or former servicemember; and
- Name and location of a school attended by the spouse or dependent of a servicemember or former servicemember, or the day care facility attended by a dependent.

The bill reenacts the public record exemption for the identification and location information of current or former members of the U.S. Armed Forces, their reserve components, or the National Guard, who served after September 11, 2001, and their spouses and dependents. The bill expands the exemption by removing the requirement that a servicemember provide a written statement to the custodial agency attesting that reasonable efforts have been made to protect the exempted information from being accessible through other means available to the public. As a result, the bill extends the repeal date from October 2, 2020, to October 2, 2025. It also provides a public necessity statement as required by the State Constitution.

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

Article I, s. 24(c) of the Florida 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 expands a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Public Record Exemption under Review

In 2015, the Legislature created a public record exemption for the identification and location information of current or former members of the United States Armed Forces, their reserve components, or the National Guard, who served after September 11, 2001, and their spouses and dependents.⁶ Specifically, the public record exemption provides that the following "identification and location information" is exempt⁷ from public disclosure:⁸

- Home address, telephone number, and date of birth of the servicemember or former servicemember;
- Home address, telephone number, date of birth, and place of employment of the spouse or dependent of the servicemember or former servicemember; and
- Name and location of a school attended by the spouse or dependent of a servicemember or former servicemember or day care facility attended by a dependent.

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Chapter 2015-86, L.O.F., codified as s. 119.071(5)(k), F.S.

⁷ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (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 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. (See Attorney General Opinion 85-62, Aug. 1, 1985).

⁸ Section 119.071(5)(k)2., F.S.

In order for the exemption to apply, the servicemember or former servicemember must submit to the custodial agency a written request to exempt the information from public record requirements.⁹ 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.¹⁰ The 2015 public necessity statement for the exemption provides that:¹¹

Servicemembers perform among the most critical, most effective, and most dangerous operations in defense of our nation's freedom. Terrorist groups have threatened servicemembers and their families and have encouraged terrorist sympathizers to harm servicemembers and their families within the United States. One terrorist group has allegedly gathered the photographs and home addresses of servicemembers from public sources to create and publish a list of servicemembers in order to make such persons vulnerable to an act of terrorism. The Legislature finds that allowing continued public access to the identification and location information of current or former servicemember and their families jeopardizes the safety of servicemembers, their spouses, and their dependents. The Legislature finds that protecting the safety and security of current or former members of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, or the National Guard, who served after September 11, 2001, and their spouse and dependents, outweighs any public benefit that may be derived from the public disclosure of the identification and location information.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2020, unless reenacted by the Legislature.¹²

During the 2019 interim, subcommittee staff sent a questionnaire to various state entities regarding the public records exemption. Based on the responses, it appears that some agencies have a difficult time determining whether the servicemember or former servicemember has made reasonable efforts to protect his or her identification and location information. This difficulty is due, in part, to no clear guidance in law on what constitutes "reasonable efforts." As such, it was recommended that the public record exemption be expanded to remove the requirement.

Effect of the Bill

The bill reenacts and expands the public record exemption for identification and location information of current or former members of the U.S. Armed Forces, their reserve components, or the National Guard, who served after September 11, 2001, and their spouses and dependents. The bill expands the exemption by removing the requirement that a servicemember provide a written statement to the custodial agency attesting that reasonable efforts were made to protect the identification and location information from being accessible through other means available to the public. Because the bill expands the current exemption, the bill extends the repeal date from October 2, 2020, to October 2, 2025. It also provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to a public record exemption for identification and location information of current or former members of the U.S. Armed Forces, their reserve components, or the National Guard, who served after September 11, 2001, and their spouse and dependents.

Section 2 provides a public necessity statement.

⁹ Section 119.071(5)(k)2.a., F.S.

¹⁰ Section 119.071(5)(k)2.b., F.S.

¹¹ Section 2, ch. 2015-86, L.O.F.

¹² Section 119.071(5)(k)4., F.S.

Section 3 provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies who are not currently redacting the identification and location information for current and former servicemembers who have not submitted written information that reasonable efforts were made to protect the identification and location information from being accessible through other means available to the public. The costs, however, would likely be absorbed within existing resources as they are part of the day-to-day responsibilities of the clerks.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not 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 I, s. 24(c) of the Florida 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 expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the

law. The bill expands a public record exemption by removing the requirement that a servicemember provide a statement that reasonable efforts were made to protect his or her identification and location information from being accessible through other means available to the public. The exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.