

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDCA 09-06 Public Records
SPONSOR(S): Economic Development & Community Affairs Policy Council
TIED BILLS: **IDEN./SIM. BILLS:** SB 2324

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	<u>Economic Development & Community Affairs Policy Council</u>	<u></u>	<u>Croom</u>	<u>Tinker</u>
1)	<u></u>	<u></u>	<u></u>	<u></u>
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SUMMARY ANALYSIS

The public's right of access to government records is established by the Constitution of the State of Florida. The Legislature, however, is authorized to create exemptions to preclude the disclosure of specified records when the exemption is found to be a public necessity and is not broader than necessary to meet that public necessity.

This proposed council bill creates s. 288.985, F.S. to provide a public records and meetings exemption for certain activities of the Florida Council on Military Base and Mission Support. Council activities covered under the bill include the records and discussions of the strengths and weaknesses of the state's military bases and strategies that are formulated to protect those bases during a base realignment and closure process.

The bill makes willful and knowing disclosure of exempt information covered under this act a first degree misdemeanor punishable as provided in ss. 775.082 or 775.083, F.S.

This bill provides for future review and repeal of the exemption and a statement of public necessity.

The exemption is effective July 1, 2009 if EDCA 09-05 or similar legislation becomes law.

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Law

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida 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.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² 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:

- 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.

Current Situation

The Department of Defense is currently engaged in completing the 2005 round of base realignments and closures, commonly referred to as "BRAC."³ The BRAC process reflects a desire to eliminate

¹ Article I, s. 24(c) of the Florida Constitution.

² Section 119.15, F.S.

³ See the Defense Base Closure and Realignment Act of 1990, Pub. L. 101-510, as amended through the National Defense Authorization Act of Fiscal Year 2003.

excess capacity, experience the savings from that reduction in capacity, and fund higher priority weapon platforms and troop training. There have been four BRAC rounds between 1988 and 1995. During the 1993 round, four Florida bases were closed.⁴

During the current 2005 BRAC round, a U.S. Army Special Forces Group of approximately 3,000 soldiers is scheduled to move from Ft. Bragg, NC to Eglin Air Force Base in Northwest Florida in the 2010-2011 timeframe. Also, Eglin is scheduled to establish multi-service/multi-nation training facilities for the F-35 Joint Strike Fighter aircraft in 2011. Eglin is slated to become the principal training facility for this latest generation military aircraft. The U.S. Navy, in a decision unrelated to the BRAC process, has recently announced its intention to homeport one of its nuclear powered aircraft carriers to Naval Station Mayport in Jacksonville. This basing decision will have significant positive economic impact on the Jacksonville area.

Only tourism and agriculture contribute more to Florida's economy than the 21 military installations and three unified commands that are situated in 13 counties throughout this state. That contribution, including associated defense industries, recently estimated at \$52 billion statewide, has a significant impact on the economic well being of each local host military community and the state as a whole.⁵

In 2003, Governor Bush created an advisory council comprised of 18 members of the private sector, including retired military officers, and state government to advise him on the BRAC 2005 round. The specific mission of the Advisory Council included:

- Keeping Florida's military installations off the base closure list;
- Knowing the capabilities of Florida's military installations for realignment potential from other locations; and
- Supporting Florida's local community BRAC efforts by acting as a coordinator to the Governor's office and the state's efforts.

The Advisory Council's responsibilities were divided into four committees as follows; Intra State Activities, Federal Activities, Public Communications, and Competitive Advantages.

No future BRAC rounds are scheduled at this time. However, a recent Government Accountability Office (GAO) report highlighted problems being encountered during the current BRAC round implementation. These problems include:

- The increased risk that some BRAC recommendations may not be completed by the statutory deadline of September 15, 2011; and
- BRAC implementation cost estimates are higher and savings estimates are lower compared to the previous fiscal year. The GAO estimates that the total 20-year savings estimate for the current BRAC round is \$13.7 billion. This is a 62 percent reduction from the BRAC Commission's original estimate of \$36 billion in savings.⁶

Effect of Proposed Changes

The proposed council bill creates s. 289.985, F.S., to provide a public records and meetings exemption for certain activities of the Florida Council on Military Base and Mission Support. Council activities covered under the bill include the records and discussions of the strengths and weaknesses of the state's military bases and strategies that are formulated to protect those bases during a base realignment and closure process.

⁴ Florida lost the Naval Aviation Depot Pensacola, the Naval Aviation Station Cecil Field Jacksonville, the Naval Training Center Orlando, and Homestead Air Force Base.

⁵ Recent study conducted by the University of West Florida on the economic impact of military spending in Florida.

⁶ Government Accountability Office, Military Base Realignments and Closures — DOD Faces Challenges in Implementing Recommendations on Time and Is Not Consistently Updating Savings Estimates, GAO-09-217, January 2009.

CS/SB 2324 provides a public disclosure exemption for the following records held by the Florida Council on Military Base and Military Support including that portion of a record relating to:

- Strengths and weaknesses of military installations or missions in this state relative to BRAC realignment and closure selection criteria;
- Strengths and weaknesses of military installations or missions in other states or territories relative to BRAC realignment and closure selection criteria; and
- The state's strategies to retain, relocate, or realign its military bases during any BRAC realignment or closure process.

Council meetings or portions thereof where exempt records are presented or discussed are exempt from public disclosure. Any records generated during such meetings, including but not limited to minutes, tape recordings, videotapes, digital recordings, transcriptions, or notes, are exempted.

Any person who willfully and knowingly violates the exemption provided for in this bill commits a misdemeanor of the first degree punishable as provided in ss. 775.082 or 775.083, F.S.

The section of statute created by this act is subject to the Open Government Sunset Review Act pursuant to s. 119.15, F.S. The section shall stand repealed on October 2, 2014, unless reviewed and reenacted by the Legislature.

The bill provides a Legislative finding of public necessity for a meetings and records disclosure exemption. This finding states that military bases enhance the national defense and the state's economic development. Given the economic contribution of military installations and defense-related industry, the state has a substantial financial interest in retaining its military bases. Consequently, protecting critical information such as strengths, weaknesses, or strategies relating to locating or retaining military bases is important if Florida is to effectively compete against other states and territories whose records are not open to the public. The state's ability to protect military bases and missions from realignment or closure or to attract new bases will be impaired if council meetings, portions of thereof, and related records are not exempted.

The proposed council substitute provides that the act shall take effect on July 1, 2009 if PCB EDCA 09-05 or similar legislation is adopted in the same legislative session and becomes law.

B. SECTION DIRECTORY:

Section 1: Provides a public records and meeting exemption for certain activities of the Florida Council on Military Base and Mission Support

Section 2: Provides a statement of public necessity for the exemption.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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 likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public records requests could require training related to the creation of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for 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 expands the current exemption under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES