

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 14-05 OGSR Florida Defense Support Task Force

**SPONSOR(S):** Government Operations Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 858

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson	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.

The base realignment and closure (BRAC) process is the process in which military installations across the nation are reviewed to determine if functions and bases can be consolidated or closed. The BRAC process reflects the Department of Defense's desire to eliminate excess capacity, experience the savings from that reduction in capacity, and fund higher priority weapon platforms and troop training.

Florida has recognized the threat that BRAC decisions pose to the state's economy and, as such, has established organizations with the direct mission to enhance Florida's military value and to advocate on behalf of the state. Currently, the Florida Defense Support Task Force (task force) is tasked with the mission to preserve and protect military installations in Florida.

Current law provides a public record and public meeting exemption for the task force. Portions of records held by the task force that relate to strengths and weaknesses of military installations or military missions in Florida and other states and territories, and to Florida's strategy to retain its military bases during any United States BRAC process, are exempt from public record requirements. Any portion of a task force meeting wherein such information is discussed is exempt from public meeting requirements. In addition, records generated during those closed meetings are exempt from public record requirements.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2014, if this bill does not become law.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> 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.

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:

- 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.

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.<sup>2</sup> 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 created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### United States Department of Defense Base Realignment and Closure Process

The base realignment and closure (BRAC) process is the process in which military installations across the nation are reviewed to determine if functions and bases can be consolidated or closed.<sup>4</sup> The BRAC process reflects the Department of Defense's desire to eliminate excess capacity, experience the savings from that reduction in capacity, and fund higher priority weapon platforms and troop training.

Under a BRAC process, the Secretary of Defense makes recommendations to the Defense Base Closure and Realignment Commission (commission).<sup>5</sup> After receiving recommendations from the Secretary, the commission conducts public hearings on the recommendations. By July 1 of each year in which the Secretary submits recommendations, the commission must transmit to the President a report containing the commission's findings and conclusions regarding the Secretary's recommendations, along with the commission's recommendations for closures and realignments of military installations inside the United States.<sup>6</sup> By July 15 of each year in which the commission makes recommendations, the President must transmit to the commission and to Congress a report containing the President's approval or disapproval of the commission's recommendations.<sup>7</sup>

Since 1988, Congress has approved five BRAC rounds, which occurred in 1988, 1991, 1993, 1995, and 2005. During the BRAC rounds that occurred from 1988 to 1995, 501 military bases, military

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>4</sup> See Public Law 101-510, as amended through the Authorization Act of Fiscal Year 2005.

<sup>5</sup> The commission is nominated by the President and confirmed by the Senate. Public Law 101-510, s. 2902.

<sup>6</sup> *Id.* at s. 2903.

<sup>7</sup> *Id.*

commands, and military housing developments were recommended closed, realigned, or a previous BRAC's decision was recommended changed. Twenty-seven of those decisions were related to military bases or military commands located in Florida.<sup>8</sup>

#### Florida Defense Support Task Force

Florida has recognized the threat that BRAC decisions pose to the state's economy and, as such, has established organizations with the direct mission to enhance Florida's military value and to advocate on behalf of the state.<sup>9</sup>

In 2011, the Legislature created the Florida Defense Support Task Force (task force)<sup>10</sup> with the mission to:

[M]ake recommendations to preserve and protect military installations to support the state's position in research and development related to or arising out of military missions and contracting, and to improve the state's military-friendly environment for service members, military dependents, military retirees, and businesses that bring military and base-related jobs to the state.<sup>11</sup>

The task force is comprised of the Governor, or his or her designee, and 12 members representing defense-related industries or communities that host military bases and installations. The Governor, President of the Senate, and Speaker of the House of Representatives each appoint four members to serve on the task force.<sup>12</sup>

#### Public Record and Public Meeting Exemption under Review

In 2009, the Legislature established the Florida Council on Military Base and Mission Support (council)<sup>13</sup> and created a public record and public meeting exemption specific to BRAC preparations by the council.<sup>14</sup> In 2012, the council was repealed and the public record and public meeting exemptions were transferred to the newly created Florida Defense Support Task Force.<sup>15</sup>

Current law provides a public record exemption for certain records held by the task force. Specifically, the following records are exempt<sup>16</sup> from public record requirements:

- That portion of a record that relates to strengths and weaknesses of military installations or military missions in Florida relative to the selection criteria for the realignment and closure of military bases and missions under the United States BRAC process.<sup>17</sup>
- That portion of a record that relates to strengths and weaknesses of military installations or military missions in other state or territories and the vulnerability of such installations or missions to base realignment or closure under the United States BRAC process, and any

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<sup>8</sup> 2005 Defense Base Closure and Realignment Commission Report, Appendix F: Base Closures and Realignments by State: 1995, 1993, 1991, and 1988; available at <http://www.brac.gov/Finalreport.html> (last visited March 2, 2014).

<sup>9</sup> Such entities include the Governor's Advisory Council on Base Realignment and Closure, which was created in 2003; Florida Council on Military Base and Mission support, which was created in 2009; and Florida Defense Support Task Force, which was created in 2011.

<sup>10</sup> Section 38, chapter 2011-76, L.O.F.; codified as s. 288.987, F.S.

<sup>11</sup> Section 288.987(2), F.S.

<sup>12</sup> Section 288.987(3), F.S.

<sup>13</sup> See chapter 2009-155, L.O.F.

<sup>14</sup> Chapter 2009-156, L.O.F.; codified as s. 288.985, F.S.

<sup>15</sup> See chapter 2012-98, L.O.F.

<sup>16</sup> There is a difference between records the Legislature designates as 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 the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>17</sup> Section 288.985(1)(a), F.S.

agreements or proposals to relocate or realign military units and missions from other states or territories.<sup>18</sup>

- That portion of a record that relates to Florida's strategy to retain its military bases during any United States BRAC process and any agreements or proposals to relocate or realign military units and missions.<sup>19</sup>

Current law also provides a public meeting exemption for any portion of a meeting of the task force, or a workgroup of the task force, wherein such exempt records are presented or discussed.<sup>20</sup> In addition, any records generated during the closed portion of the meeting are exempt from public record requirements.<sup>21</sup>

Any person who willfully and knowingly violates the exemptions commits a misdemeanor of the first degree.<sup>22,23</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2014, unless reenacted by the Legislature.<sup>24</sup>

During the 2013 interim, subcommittee staff met with staff of the task force as part of the Open Government Sunset Review process.<sup>25</sup> According to staff of the task force, the public record and public meeting exemptions are used by the task force and are necessary in allowing the task force to accomplish its mission. The exemptions are necessary as long as the task force is in existence.

### **Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for the task force. It also removes the misdemeanor penalty as penalties typically are not provided for exemptions wherein records are made exempt only, because the records custodian has the discretion to release exempt records when necessary.<sup>26</sup> The bill also removes superfluous language.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 288.985, F.S., to save from repeal the public record and public meeting exemptions for the Florida Defense Support Task Force.

Section 2 provides an effective date of October 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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<sup>18</sup> Section 288.985(1)(b), F.S.

<sup>19</sup> Section 288.985(1)(c), F.S.

<sup>20</sup> Section 288.985(2), F.S.

<sup>21</sup> Section 288.985(3), F.S.

<sup>22</sup> Section 288.985(4), F.S.

<sup>23</sup> A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000.

*See* ss. 775.082 and 775.083, F.S.

<sup>24</sup> Section 288.985(5), F.S.

<sup>25</sup> Meeting with Rocky McPherson and Bruce Grant, staff for the task force, on August 21, 2013.

<sup>26</sup> *See* footnote 16 for a discussion of the differences between exempt records and confidential and exempt records.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.