

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.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 2324

INTRODUCER: Military Affairs and Domestic Security and Senator Gaetz

SUBJECT: Public Records/Public Meetings/Military Bases

DATE: April 7, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pardue	Skelton	MS	Fav/CS
2.	Naf	Wilson	GO	Favorable
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill creates 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 exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act.¹

This bill creates a new public records exemption and therefore requires a two-thirds vote of each house of the Legislature pursuant to s. 24(c), Art. I of the State Constitution.

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 creates section 288.985 of the Florida Statutes.

¹ Section 119.15, F.S.

II. Present Situation:

Florida Public Records and Meetings

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The Florida Legislature enacted the first public records law in 1892.² In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

Article I, section 24(a) of the State Constitution and the Public Records Act³ specify the conditions under which public access must be provided to governmental records. Article I, section 24(b) of the State Constitution and s. 286.011, F.S., the Sunshine Law, specify the requirements for public meetings. While the State Constitution provides that records and meetings are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, section 24 of the Florida Constitution governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, section 24 of the Florida Constitution provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The Open Government Sunset Review Act⁴ provides for the review and repeal of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The chapter defines the term “substantial amendment” for purposes of triggering a review and repeal of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. The law was amended by ch. 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so that consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review of an exemption subject to sunset.

Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or

² Section 1390, 1391 F.S. (Rev. 1892).

³ Chapter 119, F.S.

⁴ Section 119.15, F.S.

- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

The exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

Under s. 119.15(8), F.S., notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under the section. The failure of the Legislature to comply strictly with the section does not invalidate an otherwise valid reenactment. Further, one session of the Legislature may not bind a future Legislature. As a result, a new session of the Legislature could maintain an exemption that does not meet the standards set forth in the Open Government Sunset Review Act of 1995.

Base Realignment and Closure

The Department of Defense is currently engaged in completing the 2005 round of base realignments and closures, a process which is commonly referred to as “BRAC.”⁵ The purpose of the BRAC process is to eliminate excess capacity, to create savings from that reduction in capacity, and to fund higher priority weapon platforms and troop training. Four BRAC rounds took place between 1988 and 1995. During the 1993 round, four Florida bases were closed.⁶

Under the current 2005 BRAC round, a U. S. Army Special Forces Group of approximately 3000 soldiers is scheduled to move from Ft. Bragg, North Carolina to the Eglin Air Force Base in Northwest Florida during the 2010-2011 timeframe. In addition, the Eglin Air Force Base is scheduled to establish multi-service/multi-nation training facilities for the F-35 Joint Strike Fighter aircraft in 2011. The Eglin Air Force Base is slated to become the principal military 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 relocate and 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.⁷

⁵ 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.

⁶ Florida lost the Naval Aviation Depot in Pensacola, the Naval Aviation Station Cecil Field in Jacksonville, the Naval Training Center in Orlando, and the Homestead Air Force Base.

⁷ Recent study conducted by the University of West Florida on the economic impact of military spending in Florida.

In 2003, the Governor 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 the following goals:

- 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: 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. Such problems will require careful monitoring and include:

- Increased risk that some BRAC recommendations may not be completed by the statutory deadline of September 15, 2011; and
- Higher cost estimates and lower savings estimates for BRAC implementation compared to the previous fiscal year. The GAO estimates that the total 20-year savings estimate for the current BRAC round at \$13.7 billion. This is a 62 percent reduction from the BRAC Commission's original estimate of \$36 billion in savings.⁸

III. Effect of Proposed Changes:

This bill provides a public records exemption for the following records held by the Florida Council on Military Base and Military Support:

- That portion of a record which relates to strengths and weaknesses of military installations or missions in this state relative to BRAC realignment and closure selection criteria;
- That portion of a record which relates to strengths and weaknesses of military installations or missions in other states or territories relative to BRAC realignment and closure selection criteria; and
- That portion of a record which relates to the state's strategy 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 exempt.

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.

⁸ Government Accountability Office, Military Base Realignment and Closures – DoD Faces Challenges in Implementing Recommendations on Time and Is Not Consistently Updating Savings Estimates, GAO-09-217, January 2009.

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 bill provides that the act shall take effect on July 1, 2009 if SB 2322 or similar legislation is adopted in the same legislative session and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption that will limit public access to certain records and meetings held by the Florida Council on Military Base and Mission Support. This bill meets the requirements of s. 24, Art. I of the State Constitution by containing a statement of public necessity to justify the exemption, by relating to only one subject, and by containing only one exemption. This bill requires a two-thirds vote of each house of the Legislature for enactment.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be a small annual cost associated with council activities, including the maintenance and storage of records covered under this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill's enactment is dependent upon the enactment of SB 2322 or similar legislation in this legislative session. SB 2322 establishes the Florida Council on Military Base and Mission Support.

VIII. 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 Affairs and Domestic Security Committee on March 26, 2009.

The committee substitute changes the proposed council name to the Florida Council on Military Base and Military Support and links enactment of the bill to SB 2322 or similar legislation.

B. Amendments:

None.