

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 Committee on Military and Veterans Affairs, Space, and Domestic Security

BILL: SB 858

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee

SUBJECT: A Review Under The Open Government Sunset Review Act

DATE: February 5, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Spaulding	Ryon		MS SPB 7022 as introduced

I. Summary:

SB 858 is the result of an Open Government Sunset Review performed by the Military and Veterans Affairs, Space, and Domestic Security Committee.

Current law¹ provides a public records and public meetings exemption² to enable the Florida Defense Support Task Force to evaluate the strengths and weaknesses of Florida's military installations and missions relative to the selection criteria for the realignment and closure of military bases and missions under any United States Department of Defense (DoD) Base Realignment and Closure (BRAC) process. BRAC is the process that the DoD has previously used to reorganize its installation infrastructure to more efficiently and effectively support its forces, and to reduce defense costs.³ There have been five previous BRACs.⁴ In the FY 2014 Defense Budget Proposal, the DoD proposed a 2015 BRAC,⁵ however the Consolidated Appropriations Act of 2014 did not include a BRAC provision.⁶

¹ Section 288.985(5), F.S.

² Chapter 2009-156, ss. 1-3, Laws of Fla. (creating s. 288.985, F.S., effective July 1, 2009).

³ Pub. Law No. 100-526, 100th Cong. (October 24, 1988); United States Department of Defense Base Realignment and Closure, BRAC Definitions, http://www.defense.gov/brac/definitions_brac2005.html, last viewed January 28, 2014.

⁴ United States Department of Defense Base Realignment and Closure, Prior BRAC Rounds (BRAC 1988, 1991, 1993 & 1995), Executive Summary Fiscal Year (FY) 2012 Budget Estimates, http://comptroller.defense.gov/defbudget/fy2012/budget_justification/pdfs/05_BRAC/OLD_BRAC_Exec_Sum_FY2012_PB.pdf, last viewed January 28, 2014; Defense Base Closure and Realignment Commission, <http://www.brac.gov/>, last viewed January 28, 2014.

⁵ United States Department of Defense, Summary of the DoD Fiscal Year 2014 Budget Proposal, <http://www.defense.gov/news/2014budget.pdf>, last viewed January 28, 2014.

⁶ Public Law No: 113-076

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides 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.⁷ The records of the legislative, executive, and judicial branches are specifically included.⁸ The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.⁹

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act¹⁰ guarantees every person's right to inspect and copy any state or local government public record¹¹ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹² The Sunshine Law¹³ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.¹⁴

Only the Legislature may create an exemption to public records or open meetings requirements.¹⁵ Such an exemption must be created by general law and must specifically state the public

⁷ FLA. CONST., art. I, s. 24(a).

⁸ *Id.*

⁹ FLA. CONST., art. I, s. 24(b).

¹⁰ Chapter 119, F.S.

¹¹ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "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 this chapter, 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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

¹² Section 119.07(1)(a), F.S.

¹³ Section 286.011, F.S.

¹⁴ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

¹⁵ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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)). If the Legislature designates a record as

necessity justifying the exemption.¹⁶ 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 provisions¹⁷ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁸

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁹ 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.²⁰

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.²¹ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It 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; or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³

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).

¹⁶ FLA. CONST., art. I, s. 24(c).

¹⁷ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

²⁰ Section 119.15(3), F.S.

²¹ Section 119.15(6)(b), F.S.

²² *Id.*

²³ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.²⁴ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception²⁵ to the exemption is created.²⁶

U.S. Department of Defense Base Realignment and Closure Process

The base realignment and closure process, commonly referred to as “BRAC,” is the process in which military installations across the nation are reviewed to determine whether functions and bases can be consolidated or closed. The BRAC process reflects the Department of Defense’s (DoD) 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 a Commission, nominated by the President and confirmed by the Senate. The Commission is established to provide an objective, non-partisan, and independent review and analysis of the list of military installation recommendations issued by the DoD. The Commission transmits to the President a report containing its findings and conclusions based on the review and analysis of the Secretary of Defense’s recommendations. The President then either approves the recommendations of the Commission which go into effect unless disapproved by a joint resolution of the Congress, or disapproves the recommendations in which the Commission submits revised recommendations.²⁷

All BRAC commissions use a fair, open, and equitable process, as set forth by statute to recommend the closure and realignment of military bases or military missions. While giving priority to the criteria of military value, the Commission takes into account the human impact of the base closures. Additionally, it considers the possible economic, environmental, and other effects on the surrounding communities.²⁸ The loss of jobs related to a BRAC can pose significant challenges for affected communities. The impact of a BRAC can be greater and the economic recovery slowest in rural areas. Early planning and decisive leadership from officials are important factors in addressing local socioeconomic impacts from base realignment and closing.²⁹

Since 1988, Congress has approved five BRAC rounds, which occurred in 1988, 1991, 1993, 1995, and 2005. During the four BRAC rounds that occurred from 1988 to 1995, 501 military bases, military commands, and military housing developments were recommended closed, realigned, or a previous BRAC’s decision was recommended redirected (changed). Twenty-

²⁴ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

²⁵ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

²⁶ See *State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

²⁷ United States Department of Defense Base Realignment and Closure 2005. Frequently Asked Questions. <http://www.defense.gov/brac/faqs001.html>.

²⁸ Defense Base Closure and Realignment Commission, <http://www.brac.gov/>, last viewed January 28, 2014.

²⁹ Congressional Research Service, Military Base Closures: Socioeconomic Impacts, February 7, 2012, <http://www.fas.org/sgp/crs/natsec/RS22147.pdf>, last viewed January 28, 2014.

seven of those decisions (5%) were military bases or military commands located in Florida.³⁰ During the 2005 BRAC, 22 base closures were recommended by the Commission, in which no Florida bases were included. The same 2005 Commission recommended 30 major realignments, of which only one effected a Florida installation.³¹

The state of Florida has recognized the threat which BRAC decisions pose to the state's economy, and thus along the way, has established organizations with the direct mission to enhance Florida's military value and to advocate on behalf of the state. Such entities include the Governor's Advisory Council on Base Realignment and Closure (created in 2003), the Florida Council on Military Base and Mission Support (created in 2009), and the Florida Defense Support Task Force (created in 2011). The Florida Defense Support Task Force is the single entity currently in existence charged with a BRAC-focused mission.

Florida Defense Support Task Force

The Legislature created the Florida Defense Support Task Force (Task Force)³² in 2011 and tasked it to make recommendations to preserve and protect military installations and to support the state's position in research and development related to military missions and contracting. The Task Force is also charged with improving 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.³³

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, the President of the Senate, and the Speaker of the House of Representatives each appoint 4 members to serve on the Task Force.³⁴

The Task Force accomplishes its mission in a variety of ways including the following examples:

- Conducting detailed research and analysis of the military value of all installations in the state;
- Advocating on behalf of Florida's military installations;
- Assisting the state in the purchase of land to prevent encroachment from impacting mission capabilities for military installations in Florida;
- Improving transportation access and infrastructure to military installations in the state;
- Assisting Florida installations in meeting DoD renewable energy goals; and
- Supporting military families through various initiatives including funding Florida's dues to the Interstate Compact on Educational Opportunity for Military Children in previous years.³⁵

³⁰ 2005 Defense Base Closure and Realignment Commission Report, Appendix F: Base Closures and Realignments by State: 1995, 1993, 1991, and 1988, <http://www.brac.gov/docs/final/AppendixF.pdf>, last viewed January 28, 2014.

³¹ 2005 Defense Base Closure and Realignment Commission Report, <http://www.brac.gov/docs/final/Volume1BRACReport.pdf>, last viewed January 28, 2014.

³² Chapter 2011-76, s. 38, Laws of Fla (creating s. 288.987 F.S., effective May 31, 2011).

³³ Chapter 2012-159, s. 11, Laws of Fla. (effective April 27, 2012).

³⁴ Section 288.987(3), F.S.

³⁵ Florida Defense Support Task Force 2012 Annual Report and 2013 Work Plan, http://www.eflorida.com/fdstf/docs/about_us/2012_FDSTF_Annual_Report.pdf, last viewed January 28, 2014.

Public Records Exemption under Review

In 2009, the Legislature concurrently established the Florida Council on Military Base and Mission Support (Council)³⁶ and a corresponding public records and meeting exemption³⁷ specific to BRAC preparations.³⁸ Following the repeal of Council in 2012,³⁹ the public records and meeting exemption were transferred to the newly created Florida Defense Support Task Force.⁴⁰

Section 288.985(1), F.S., provides a public records exemption protecting information presented to or created by the Task Force pertaining to the realignment and closure of military bases and missions by a BRAC process. Specifically, information narrowly focused on the following topics is exempt from public disclosure:

- The strengths and weaknesses of military installations or military missions in Florida relative to the selection criteria for a BRAC process;
- The strengths and weaknesses of military installations or military missions in other states or territories and the vulnerability of such installations or missions being subject to BRAC action; and
- The state's strategy to retain its military bases during a BRAC process.

Additionally, s. 288.985(2), F.S., provides that meetings or portions of meetings held by the Task Force or its workgroups at which the above-mentioned exempt records are presented or discussed are exempt from public meeting requirements.⁴¹ Also exempt from public disclosure are any records generated during meetings closed to the public, including but not limited to, minutes, tape recordings, videotapes, digital recordings, transcriptions, or notes.⁴²

The exemptions in s. 288.985, F.S., are subject to the Open Government Sunset Review Act and are scheduled to be repealed on October 2, 2014, unless the Legislature reenacts the exemption pursuant to the requirements in s. 119.15, F.S.

Professional staff of the Military and Veterans Affairs, Space, and Domestic Security Committee conducted a review of the public records and public meeting exemption in s. 288.985, F.S., as required by the Open Government Sunset Review Act.⁴³ In response to a questionnaire regarding the exemption, Task Force staff indicated that there is a public necessity to continue to protect records and meetings pertaining to BRAC from public disclosure and recommended reenactment of the exemption under review.⁴⁴

³⁶ Chapter 2009-155, ss. 1-2, Laws of Fla (creating s. 288.984, F.S. effective July 1, 2009).

³⁷ Chapter 2009-156, ss. 1-3, Laws of Fla (effective July 1, 2009).

³⁸ According to Task Force staff, the public records and meeting exemption was never utilized while the Council was in existence.

³⁹ Chapter 2012-159, s. 9, Laws of Fla (effective July 1, 2012).

⁴⁰ Chapter 2012-98, s. 6, Law of Fla (effective July 1, 2012).

⁴¹ Section 288.985(2), F.S.

⁴² Section 288.985(3), F.S.

⁴³ Section 119.15, F.S.

⁴⁴ Questionnaire on file with the Military and Veterans Affairs, Space, and Domestic Security Committee.

The Task Force actively utilizes both the public records and public meeting exemptions to carry out its statutorily required functions. The public records exemption currently protects, among other records, certain reports and plans, including a statewide assessment of Florida's military value and a plan for advocating on behalf of Florida's military installations. Additionally, as of February 3, 2013, the Task Force had utilized the public meeting exemption at 15 of the 22 Task Force meetings held since its inception in January 2012.

While it is unknown when the next BRAC round will take place, by statute, the Task Force is required to continue to explore strategies to secure military installations in the state.⁴⁵ Under any formal BRAC process, Florida's military installations will be considered for realignment or closure. The potential consequences could be permanent losses of military installations, permanent losses of positions of employment, and detrimental economic effects to local communities across the state.

The review of the public records and meeting exemptions conducted by professional staff found the exemptions to be necessary in order for the Task Force to effectively and efficiently prepare the state of Florida for any future BRAC action by enhancing Florida's military value and identifying and remedying military weaknesses.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 288.985(5), F.S., to remove its scheduled repeal on October 2, 2014, thereby reenacting the public records and public meeting exemption for information presented to or created by the Florida Defense Support Task Force or its workgroups that relates to the realignment and closure of military bases and missions by a BRAC process.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill reenacts and amends an existing public records exemption specified in s. 288.985(5), F.S. The bill does not expand the scope of the exemption and therefore does not require a two-thirds vote of each house of the Legislature for passage.

C. Trust Funds Restrictions:

None.

⁴⁵ Section 288.987, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 288.985 (5) 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.