

**STORAGE NAME:** h0021E.sa.doc  
**DATE:** April 30, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
STATE ADMINISTRATION  
ANALYSIS**

**BILL #:** HB 21-E  
**RELATING TO:** Public-Records/ID Info/Military  
**SPONSOR(S):** Representative(s) Paul

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) STATE ADMINISTRATION
  - (2)
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

The Department of Defense has historically advised individuals to record their military separation form with their Clerk of Court for safekeeping; however, there is no federal law that requires an individual to do so. As more public records are being placed on the Internet, and personal information is becoming susceptible to abuse, the Department of Defense is now advising individuals otherwise.

This bill creates a public records exemption for the personal identifying information contained in the following military separation forms held by the Clerks of the Court: DD-214, DD-215, WD AGO 53, WD AGO 55, WD AGO 53-55, NAVMC 78-PD, and NAVPERS 553. Personal identifying information includes the name, social security number, date of birth, home of record, and next of kin. This bill permits the clerk of court to release a complete copy of any of these forms to the person named in the form or his or her personal representative, executor, or court-appointed guardian.

This bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that making confidential and exempt the personal identifying information in military separation forms is a public necessity because the availability of that information in public records, especially when accessible on the internet, facilitates the crime of identify theft. The availability of this information also permits the identification of specific individuals who have served in the armed forces, which information may be of use in planning terrorist acts.

A bill was passed during the 2002 regular session, CS/HB 1679, that prohibits the Clerks from prospectively placing an image or copy of a military discharge on a publicly available Internet website for general public display. The Clerk must also remove such image or copy already on the Internet if requested to do so by the affected person. CS/HB 1679 does allow for over the counter disclosure as well as disclosure through other electronic means, such as a data dump. HB 21-E makes confidential and exempt certain personal identifying information contained in military separation forms, and does not provide any exceptions for private businesses or over the counter disclosure.

This bill provides for future review and repeal of the public records exemption. This bill does not provide for retroactive application of the public records exemption.

Please see the "Fiscal Comments" section for discussion of the potential fiscal impact of this bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Public Records Law**

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. 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.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

### Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. 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. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. 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.

### Military Separation Forms

The Department of Defense issues a military separation form when an individual retires or separates from the military. The most common military separation form is the DD-214<sup>1</sup>. The DD-214 includes various information on the retiring or separating individual such as his or her social security number, date of birth, home of record at time of entry, and nearest relative.<sup>2</sup> The DD-214 is issued to those individuals who have retired or separated from the military since 1951. A corrected DD-214 is known as a DD-215. The following military separation forms were issued prior to 1951: WD AGO 53, WD AGO 55, NAVMC 78 – PD, and NAVPERS 553.<sup>3</sup>

There is no federal law that requires an individual to record his or her military separation form as an official record. However, the Department of Defense has historically advised individuals to record their DD-214 with their local county courthouse for safekeeping.<sup>4</sup> As more public records are being

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<sup>1</sup> DD = Department of Defense

<sup>2</sup> The DD-214 also includes the following information on the retiring or separating individual: sex; department, component or branch; grade, rate, or rank; pay grade; place of entry into active duty; last duty assignment and major command; station where separated; command to which transferred; station where separated; primary specialty; record of service; decorations, medals, or badges; military education; mailing address after separation; and the type of separation. Information provided by the Florida Association of Court Clerks and Comptrollers by facsimile transmission on April 29, 2002.

<sup>3</sup> WD AGO = War Department Adjutant General Office; NAVMC 78 - PD = Navy Medical Command – Personnel Division; NAVPERS = Navy Personnel. Information provided by the Department of Military Affairs' Office of Legislative Affairs, April 30, 2002.

<sup>4</sup> In Florida, retiring or separating individuals were traditionally advised to file their military separation forms with their local clerk of the court.

placed on the Internet, and are therefore becoming more accessible by the general public, the Department of Defense is now advising individuals to safeguard their personal information to guard against veteran identify theft.<sup>5</sup> To help guard against identify theft, military transition centers<sup>6</sup> are no longer placing social security numbers on discharge and retirement certificates.<sup>7</sup> In addition, transition centers are recommending to those leaving the military to “safeguard the form as you would any vital papers such as a will, marriage license or insurance papers . . . A safe deposit box would be a good investment.”<sup>8</sup> Therefore, many individuals retiring or separating from the military are being encouraged to no longer record their military separation forms with their local county courthouse.<sup>9</sup>

### **Clerks of the Circuit Court**

Article V, Section 16, of the Florida Constitution establishes as constitutional officers the Clerks of the Circuit Courts (Clerks). Chapter 28, F.S., sets forth the duties and responsibilities of a Clerk. Section 28.222, F.S., states that the Clerk “shall be the recorder of all instruments<sup>10</sup> that he or she may be required or authorized by law to record in the county where he or she is Clerk.” The Clerk is to record all instruments in one general series called “official records.”<sup>11</sup>

Section 28.2221, F.S., requires Clerks, by January 1, 2002, to provide, on a publicly available Internet website, a current index of documents recorded in the official records of the county beginning with those documents filed on or after January 1, 1990. To date, approximately 56 of the 67 Clerks<sup>12</sup> have provided electronic access to this index.<sup>13</sup> By January 1, 2006, the Clerks are required to make available, “on the county’s official records website”, images of those official records that are indexed electronically. To date, approximately 20 of the 67 Clerks have made

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<sup>5</sup> ArmyLINK News, *Scams target veterans for identity theft*, by Staff Sgt. Marcia Triggs, February 23, 2002, received online at <http://www.dtic.mil/armylink/news/Jan2002/a20020122dd214.html>

<sup>6</sup> Each branch of the military has transition centers to assist individuals who are retiring or separating from military service. Information provided by the Department of Military Affairs’ Office of Legislative Services, April 30, 2002.

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

<sup>8</sup> *Id.*

<sup>9</sup> Pursuant to a telephone conversation with the Department of Military Affairs’ Office of Legislative Affairs, April 29, 2002.

<sup>10</sup> Section 28.222(3), F.S., provides that instruments are:

- Deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions;
- Other instruments relating to the ownership, transfer, or encumbrance of or claims against real or personal property or any interest in it;
- Extensions, assignments, releases, cancellations, or satisfactions of mortgages and liens;
- Powers of attorney relating to any of the instruments;
- Notices of lis pendens;
- Judgments, including certified copies of judgments, entered by any court of this state or by a United States court having jurisdiction in this state and assignments, releases, and satisfactions of the judgments;
- That portion of a certificate of discharge, separation, or service which indicates the character of discharge, separation, or service of any citizen of this state with respect to the military, air, or naval forces of the United States;
- Notices of liens for taxes payable to the United States and other liens in favor of the United States, and certificates discharging, partially discharging, or releasing the liens, in accordance with the laws of the United States;
- Certified copies of petitions, with schedules omitted, commencing proceedings under the Bankruptcy Act of the United States, decrees of adjudication in the proceedings, and orders approving the bonds of trustees appointed in the proceedings; and
- Certified copies of death certificates authorized for issuance by the Department of Health which exclude the information that is confidential under s. 382.008 [cause of death], and certified copies of death certificates issued by another state whether or not they exclude the information described as confidential in s. 382.008.

<sup>11</sup> Section 28.001, F.S., defines “official records” to mean “each instrument that the clerk of the circuit court is required or authorized to record in one general series called ‘Official Records’ as provided for in s. 28.222.”

<sup>12</sup> The statutory language references “county recorder”; the county recorders, in all but two instances are Clerks of Court, so for consistency, this analysis refers to the county recorder as the Clerk.

<sup>13</sup> Provided by the Florida Association of Court Clerks and Comp trollers by e-mail on April 29, 2002.

images of official records available on their county websites.<sup>14</sup> Images of military separation forms are among those official records that are being made electronically available.

### **2002 Legislative Session**

The Legislature passed CS/HB 1679 during the 2002 legislative session. *This bill prohibits any Clerk from placing on a publicly available Internet website an image or copy of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.* Such records placed on the Internet prior to the effective date of the bill must be removed if the affected party so requires and identifies the document to be removed. In addition, the Clerks must provide and publish notice regarding an individual's right to request removal of such documents from the Internet. Furthermore, any affected person may petition the circuit court for an order directing compliance with this provision. CS/HB 1679 does allow for over the counter disclosure as well as disclosure through other electronic means, such as a data dump.

Military discharge forms are synonymous with military separation forms.<sup>15</sup> Therefore, CS/HB 1679 effectively prohibits any military separation forms from being prospectively placed on the Internet for general public display. If an individual has already filed his or her military separation form with the Clerk prior to the effective date of CS/HB 1679, such individual may request the removal of this document from the Internet.

#### **C. EFFECT OF PROPOSED CHANGES:**

This bill creates a public records exemption for the personal identifying information contained in the following military separation forms held by the Clerk of the Court: DD-214, DD-215, WD AGO 53, WD AGO 55, WD AGO 53-55, NAVMC 78-PD, and NAVPERS 553. The DD-214 and the DD-215 are military discharge forms issued to those individuals retiring or separating from the military since 1951. The remainder of the forms were utilized prior to 1951. Personal identifying information includes the name, social security number, date of birth, home of record, and next of kin. This bill permits the Clerk of the Court to release a complete copy of any of these forms to the person named in the form or his or her personal representative, executor, or court-appointed guardian.

This bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that making confidential and exempt<sup>16</sup> the personal identifying information in military separation forms is a public necessity because the availability of that information in public records, especially when accessible on the internet, facilitates the crime of identify theft. Successful identity theft may result in severe economic harm to former military personnel as well as subject them to an invasion of privacy through access to medical or other personal files. The availability of this information also permits the identification of specific individuals who have served in the armed forces, which information may be of use in planning terrorist acts.

This bill does not provide for retroactive application of the public records exemption.<sup>17</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> Department of Military Affairs' Office of Legislative Affairs, April 30, 2002.

<sup>16</sup> Information and records that are made "confidential and exempt" may not be released to anyone other than to the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62, August 1, 1985

<sup>17</sup> On April 26, 2001, the Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. vs. News-Journal Corporation*, 26 Fla. L. Weekly S268.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. 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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There is a potential fiscal impact on the offices of the Clerks of the Court. This bill requires that certain personal identifying information be redacted from military separation forms before such forms are made available for public disclosure. Accordingly, before any image or copy of a military separation form is made available either electronically or over the counter, the Clerks are responsible for redacting the personal identifying information made confidential and exempt by this bill. This may have a fiscal impact in terms of the time and manpower needed for redaction.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

CS/SB 980, filed during the 2002 legislative session, contained identical provisions to those in HB 21-E, and its Senate companion, SB 24-E. CS/SB 980 did not have a house companion and it died in messages on March 22, 2002.

The First Amendment Foundation does not support HB 21-E and issued the following statement:

As we understand the issue, the problem is that clerks of court are placing military discharge forms on the Internet. In response, the Legislature approved CS/HB 1679 during the 2002 regular session which prohibits the clerks from placing military discharge forms on the Internet . . . It is our position that this approach addresses the concerns of our veterans without offending the public's constitutional right of access. . . In addition, military discharge forms are readily available from the federal government through a FOIA request, and we've consistently taken the position that an exemption for information that is otherwise available cannot be constitutionally justified as "necessary" to accomplish any valid purpose under Florida's Constitution.<sup>18</sup>

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

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Lauren Cyran, M.S.

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J. Marleen Ahearn, Ph.D., J.D.

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<sup>18</sup> First Amendment Foundation, letter written by Barbara A. Petersen, President, provided by facsimile transmission on April 30, 2002.