

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1345 w/CS                      Public Records and Meetings Exemptions/Military Installations  
**SPONSOR(S):** Sorenson  
**TIED BILLS:** None                              **IDEN./SIM. BILLS:** SB 2496

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Commerce</u>	<u>19 Y, 0 N w/CS</u>	<u>Billmeier</u>	<u>Billmeier</u>
2) <u>State Administration</u>	<u></u>	<u>Williamson</u>	<u>Everhart</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

The Department of Defense is engaged in a process, commonly known as "BRAC", during which military installations across the nation will be reviewed to determine whether functions and bases can be consolidated or closed. The final decision on which bases to realign or close must be made by the President on November 7, 2005, and the process will conclude in 2006. In 2003, the Governor created the "Governor's Advisory Council on Base Realignment and Closure" to develop a plan to protect Florida's military bases from realignment or closure. The Office of Tourism, Trade, and Economic Development (OTTED) provides staffing to the Advisory Council.

This bill creates public records exemption for certain records regarding the BRAC process held by Enterprise Florida, Inc., OTTED, or the Governor's Advisory Council on Base Realignment and Closure. It also creates a public meetings exemption for meetings or portions of meetings held by OTTED, the Advisory Council, or a committee or subcommittee of the Advisory Council at which confidential and exempt information is discussed. Any records generated during closed portions of meetings are also confidential and exempt from public disclosure.

This bill creates an exception to the exemption for public employees and creates a criminal penalty for any person violating the provisions of this bill.

The public meetings and records exemptions will repeal May 31, 2006, and records made confidential and exempt will be available for public inspection and copying.

This bill appears to have a minimal fiscal impact on state government. See "FISCAL COMMENTS" section.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1345b.sa.doc  
**DATE:** March 25, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

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

This bill creates a first degree misdemeanor penalty for any person violation the exemption provisions.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

The Department of Defense has embarked on another round of base realignments and closures, commonly referred to as “BRAC,” during which military installations across the nation will be reviewed to determine whether functions and bases can be consolidated or closed. The BRAC process reflects a desire to eliminate 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.<sup>1</sup> The final decision on which bases to realign or close must be made by the President on November 7, 2005.

In 2003, the Governor created the “Governor’s Advisory Council on Base Realignment and Closure” (“Advisory Council”) to develop a plan to protect Florida’s military bases from realignment or closure.<sup>2</sup> The mission of the Advisory Council is: (1) to keep Florida’s military installations off the base closure list; (2) to know the capabilities of Florida’s military installations to absorb additional responsibilities and personnel from other locations; and (3) to support Florida’s local community BRAC efforts by acting as a coordinator to the Governor’s office.<sup>3</sup> The Office of Tourism, Trade, and Economic Development (OTTED), created within the Executive Office of the Governor, is charged with creating economic development strategies for all Floridians.<sup>4</sup> OTTED provides staffing to the Advisory Council.

According to representatives of Enterprise, Florida, Inc., some of the information gathered and discussions held relating to Florida’s strategies to retain military bases would be valuable to other states competing with Florida for bases and programs. The information gathered by the Governor’s Office or the Advisory Council would be public under s. 119.07(1), F.S., and Art. I, s. 24(a), Fla. Const.

##### Effect of Proposed Changes

This bill creates a public records exemption for the following records held by Enterprise Florida, Inc., OTTED, or the Advisory Council:

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<sup>1</sup> Florida lost the Naval Aviation Depot Pensacola, the Naval Aviation Station Cecil Field Jacksonville, the Naval Training Center Orlando, and Homestead Air Force Base.

<sup>2</sup> See Press Release, *Governor Bush Begins Proactive Campaign to Save Florida’s Military Installations from 2005 Federal Base Closures*, March 10, 2003.

<sup>3</sup> Presentation by the Office of Tourism, Trade, and Economic Development.

<sup>4</sup> See s. 14.2015, F.S.

- Records that relate 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;
- Records that relate to strengths and weaknesses of military installations or military missions in other states or territories and the vulnerability of such installations or missions to base realignment or closure; and
- Records that relate to the state's strategy to retain its military bases, and any agreements or proposals to relocate or realign military units and missions.

This bill also creates a public meetings exemption for meetings or portions of meetings of OTTED, the Advisory Council, or a committee or subcommittee of the Advisory Council at which confidential and exempt information is discussed. Any records generated during closed portions meetings are confidential and exempt from public disclosure.

This bill permits public employees to inspect and copy records made confidential and exempt by this bill but requires such employees to maintain the confidential and exempt status. Any person who violates the provisions of this bill commits a first degree misdemeanor.

The public meetings and records exemptions created by this bill will repeal May 31, 2006, and records made confidential and exempt will be available for public inspection and copying.

This bill provides a statement of public necessity.

#### C. SECTION DIRECTORY:

Section 1 creates s. 288.982, F.S., creating a public records exemption for the Advisory Council, Enterprise Florida, Inc., and OTTED; and creates a public meetings exemption for OTTED, the Advisory Council, and subcommittees of the Advisory Council.

Section 2 provides a statement of public necessity.

Section 3 provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

This bill does not appear to impact revenues of state government.

#### 2. Expenditures:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no measurable fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

This bill does not appear to impact revenues of local governments.

2. Expenditures:

This bill does not appear to impact expenditures of local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have an economic impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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 records or public meetings exemption. This bill requires a two-thirds vote for final passage. This bill can be reported favorably from a committee of reference by majority vote.

This exemption appears overly broad in that it creates a public meetings exemption for OTTED. OTTED has stated that a public meetings exemption is not required for its office because it does not hold meetings regarding the BRAC process.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Public Records and Public Meetings Laws**

Article I, s. 24(a), 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. Article I, s. 24(b), Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, 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.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of

1995<sup>5</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting 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, 3. Protecting trade or business secrets.

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

The Committee on Commerce considered this bill on March 17, 2004, and adopted a "strike everything" amendment. The bill exempted certain records held by the Governor's Advisory Council on Base Realignment and Closure and the Office of Tourism, Trade, and Economic Development from public records disclosure requirements. The amendment exempted the same types of records if held by Enterprise Florida, Inc. The amendment also made technical changes throughout the bill. The bill, as amended, was reported favorably with a committee substitute.

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<sup>5</sup> Section 119.15, F.S.