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DATE: February 20, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 397 (PCB SA 01-08)
RELATING TO: Public Records Exemption for Certain Information Relating to Repayment of Electronic Toll Facility Charges by Check, Credit Card or Charge Card
SPONSOR(S): Committee on State Administration and Representative(s) Brummer
TIED BILL(S): None

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 11 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The Open Government Sunset Review Act of 1995 provides that an exemption from the requirements of the public records or public meetings laws 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.

Further, the Open Government Sunset Review Act of 1995 sets forth a review process which requires that on October 2nd in the fifth year after enactment of a new exemption or "substantial amendment" of an existing exemption, the exemption is to repeal, unless the Legislature reenacts the exemption. By June, of the year before the repeal of an exemption, the Division of Statutory Revision of the Office of Legislative Services must certify, to the President of the Senate and the Speaker of the House of Representatives, the language that will repeal and the statutory citation for each exemption scheduled for repeal.

Section 338.155(6), F.S., provides that personal identifying information provided to, acquired by, or in the possession of the Department of Transportation, a county, or an expressway authority in connection with a person using a credit card, charge card, or check to pay toll facility charges is exempt from public disclosure. This section was certified by the Division of Statutory Revision and will repeal on October 2, 2001, unless otherwise reenacted by the Legislature.

This bill reenacts s. 338.155(6), F.S., adding a needed cross reference and eliminating the repeal language.

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

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.

Article I, s. 24, Florida Constitution, does not set forth any repeal or review requirements.

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.

Section 119.15, F.S., sets forth a review process which requires that on October 2nd in the fifth year after enactment of a new exemption or "substantial amendment"¹ of an existing exemption, the exemption is to repeal, unless the Legislature reenacts the exemption. By June, of the year before the repeal of an exemption, the Division of Statutory Revision of the Office of Legislative Services must certify, to the President of the Senate and the Speaker of the House of Representatives, the language that will repeal and the statutory citation for each exemption scheduled for repeal. s. 119.15(3)(d), F.S.

Section 338.155(6), F.S., was certified by the Division of Statutory Revision and will repeal on October 2, 2001, unless otherwise reenacted by the Legislature.

Analytical Framework

The Florida Constitution does not require the repeal, review, or reenactment of exemptions; the Open Government Sunset Review Act (s. 119.15, F.S.) does. However, the Open Government Sunset Review Act is a Florida statutory provision created by the Legislature. Accordingly, because one Legislature cannot bind another, the requirements of s. 119.15, F.S., do not have to be met.² Nonetheless, because the certified exemption as found in the

¹ 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. An exemption is not substantially amended if the amendment narrows the scope of the exemption. s. 119.15(3)(b), F.S.

² The requirements of Article 1, s. 24(c), Florida Constitution, must, however, be met with regard to any exemption created on or after July 1, 1993. See *infra* Florida Constitution.

Florida Statutes actually contains language that repeals the exemption as of October 2nd, 2001, that exemption *will* repeal unless the legislature reenacts the exemption.³

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 is required, as a result of the requirements of Article 1, s. 24, Florida Constitution. 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 (e.g., allowing another agency access to the exempt records), then a public necessity statement is not required. Article 1, s. 24, Florida Constitution, only requires a public necessity statement when creating an exemption, and also requires that the exemption be in a separate bill.⁴

Toll Facility Payments

Chapter 338, F.S., addresses the Florida Intrastate Highway System and toll facilities. The law authorizes the Department of Transportation (DOT), expressway authorities, and other similar agencies to construct roads and to collect tolls to pay for the construction and maintenance of those roads.

Chapter 348, F.S., the "Florida Expressway Authority Act", authorizes the creation of expressway and bridge authorities in the state.

Orlando-Orange County Expressway Authority (Authority) is a state created authority, codified in Part V of Chapter 348, F.S. The Authority has constructed a system of expressways in the Orlando-Orange County area. These expressways were largely financed through revenue bonds, backed by the payment of tolls by expressway users at toll plazas. (See Committee on Transportation Final Bill Analysis and Economic Impact Statement, CS for HB 689, May 29, 1996)

In FY 1994-95, the Authority implemented an automated electronic toll collection system on the expressway called "E-PASS". The Authority began using a transponder, mounted on the front of user cars, to facilitate passage through Orange County toll facilities. The transponder allows motorists to establish a prepaid toll account funded by either check payments or direct debits to a major credit card or charge card. As the driver passes through the E-PASS toll lane, at a reduced rate of speed, the transponder makes electronic contact with a receiver in the toll lane and identifies the vehicle. Immediately, the amount of the toll is deducted from the motorist's prepaid *E-Pass* account without the vehicle having to stop. (See The Florida Senate Interim Project Report 2001-047, November 2000)

A \$30 deposit is required of *E-Pass* users who pay by check. There is no deposit required if an *E-Pass* account is prepaid by credit card. The *E-Pass* application includes the driver's name, address, work and home telephone numbers, credit card account number, driver's license number, and vehicle identification information. (*Id.*)

The Authority encourages use of the E-PASS system because it not only reduces toll collection costs, but it is also a more convenient method of payment for individual motorists and for business fleets. In addition, use of the E-PASS system reduces congestion at toll plazas and increases the capacity of the expressway system because vehicles do not have to come to a complete stop to pay a toll. (See Committee on Transportation Final Bill Analysis and Economic Impact Statement, CS for HB 689, May 29, 1996)

³ Please note that the effective date of this bill is prior to the repeal date of October 2, 2001.

⁴ If various exemptions are reenacted that do not expand the exemption, then there is no requirement that the exemptions be in separate bills; provided however, that the bill containing the reenactments meets the single subject requirement.

According to DOT, there are 153 toll plazas operated by the department throughout the state. There are an additional 51 plazas operated by the Orlando-Orange County Expressway Authority. The DOT electronic toll collection system, SUNPASS, is also utilized by the Tampa-Hillsborough County Expressway Authority and the Miami-Dade County Expressway Authority. SUNPASS users are required to purchase the transponder for \$25. DOT has sold approximately 250,000 transponders. The Orlando-Orange County Expressway Authority plans to begin selling *E-Pass* transponders effective January 1, 2001. (See The Florida Senate Interim Project Report 2001-047, November 2000)

Section 338.155(6), F.S.

Section 338.155(6), F.S., provides that personal identifying information provided to, acquired by, or in the possession of the DOT, a county, or an expressway authority in connection with a person using a credit card, charge card, or check to pay toll facility charges is exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Such personal identifying information includes the driver's name, address, work and home telephone numbers, credit card account number, driver's license number, and vehicle identification information. This section was certified by the Division of Statutory Revision and will repeal on October 2, 2001, unless otherwise reenacted by the Legislature.

C. EFFECT OF PROPOSED CHANGES:

This bill reenacts s. 338.155(6), F.S., verbatim, with two exceptions. First, it specifies the specific subsection of s. 119.07, F.S., referred to when exempting the records from the public disclosure requirement. Second, the bill removes the language scheduling the repeal of the exemption for prepayment of toll information. By reenacting s. 338.155(6), F.S., personal identifying information provided to, acquired by, or in the possession of the DOT, a county, or an expressway authority in connection with a person using a credit card, charge card, or check to pay toll facility charges will remain exempt from public disclosure.

This exemption puts individuals who pay tolls with a check or credit card on an equal footing with individuals who pay cash at the toll booth. The exemption protects the health and safety of the public by keeping information as to the whereabouts of individuals as they use the toll collection system exempt from public disclosure. The exemption promotes the use of the toll collection system, which is a more efficient and effective government collection system for tolls, because prepaying for tolls by check or credit card not only saves individuals time in passing through the toll facilities, in comparison with individuals who pay cash, but also costs much less to administer. Further, the exemption protects the privacy of individuals and promotes the right to be let alone from unreasonable government intrusion by prohibiting the public disclosure of private information about the finances and location of the individuals using the toll collection system. (See CS/SB 426, s. 4, 1996)

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:

To the extent that this exemption reduces concerns that records about personal financial information and toll facility movements and whereabouts will be subject to public disclosure, and thereby encourages motorist to use the E-PASS system and the SUNPASS system, the governmental entities that own toll facilities will benefit from reduced toll collection costs and increased vehicle capacity at toll plazas.

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 which requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

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B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

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