

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1664

SPONSOR: Governmental Oversight & Productivity Committee and Senator Wise

SUBJECT: Public Records Exemption

DATE: April 1, 2003                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>TR</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The committee substitute makes confidential and exempt all personal identifying information in records relating to a person’s health held by local government entities or their service providers for the purpose of determining eligibility for paratransit services under Title II of the Americans with Disabilities Act or eligibility for the Transportation Disadvantaged Program as provided in part I of ch. 427, F.S. Such information may be released with the express written consent of the individual or his or her legally authorized representative; in a medical emergency, if necessary to protect the health or life of the individual; by court order upon a showing of good cause; or for purposes of determining eligibility for paratransit services, if the individual or the individual’s representative has filed an appeal or petition before an administrative body of a local government or a court.

This bill creates section 119.07(3)(gg) of the Florida Statutes.

**II. Present Situation:**

**Public Records Law**

Article I, s. 24(a) of the State Constitution, expresses Florida’s public policy regarding access to government records:

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, however, does permit the Legislature to provide by general law for the exemption of records from open government requirements. A law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Section 119.07(1)(a), F.S., provides that 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.

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.

### **Americans with Disabilities Act (ADA) and Paratransit Services**

The Americans with Disabilities Act of 1990 (the "ADA") requires public entities that operate non-commuter fixed route transportation services to provide complementary paratransit service for individuals whom are unable to use the fixed route system.<sup>1</sup> Paratransit services, or other

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<sup>1</sup> 42 U.S.C. 12143 (paratransit as a complement to fixed route service). The term "paratransit" refers to "those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and the provider of the service." Demand-responsive

special transportation, must be sufficient to provide the individual with a level of service that is comparable to the level of service that individuals with disabilities using designated public transportation receive or, a response time that is comparable, to the extent practicable, as individuals without disabilities receive using designated public transportation. The U.S. Department of Transportation issued regulations that specify to whom and under what circumstances this service is to be provided. In addition, the regulations require public entities that are subject to the complimentary paratransit requirements to develop and administer a process for determining if individuals who request service meet the regulatory criteria for eligibility.

Eligibility for complementary paratransit service is directly related to the inability of a person with a disability to use the existing fixed route service. The regulations describe three specific circumstances under which a person would be considered ADA paratransit eligible. The three categories of eligibility are:

- Any individual with a disability who is unable, as the result of a physical or mental impairment (including a vision impairment), and without the assistance of another individual (except the operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities.
- Any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device and is able, with such assistance, to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route of the system during the hours of operation of the system at a time, or within a reasonable period of such time, when such a vehicle is not being used to provide designated public transportation on the route.
- Any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system.

In Florida, 23 county governments provide ADA Paratransit Services. In order to assure proper eligibility, an applicant must complete an application, which requires disclosure of medical and disability information, the applicant's social security number, and additional identifying information. Currently, there is no public records exemption for this information.

Part I of chapter 427, F.S., establishes the Transportation Disadvantaged Program. This program is administered through a decentralized network of state and local organizations. The Commission for the Transportation Disadvantaged is the state entity responsible for ensuring the coordination and delivery of transportation disadvantaged services in a cost-effective manner throughout the state. Various state agencies provide funding for specific client groups. At the local level coordination of transportation disadvantaged services is accomplished through planning agencies and community transportation coordinators.

### III. Effect of Proposed Changes:

**Section 1** of the bill makes confidential and exempt all personal identifying information contained in records relating to a person's health held by local government entities or their service providers for the purpose of determining eligibility for paratransit services under Title II of the Americans with Disabilities Act or the Transportation Disadvantaged Program as provided in part I of chapter 427, F.S.

The bill provides for exceptions to this exemption. The information can be released:

- With the express written consent of the individual or his or her legally authorized representative;
- In a medical emergency, but only to the extent necessary to protect the health or life of the individual;
- By order of a court upon a showing of good cause; or
- For purposes of determining eligibility for paratransit services, if the individual or the individual's representative has filed an appeal or petition before an administrative body of a local government or a court.

The bill provides for retroactive application of the public records exemption.

**Section 2** of the bill makes this exemption subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2008, unless reviewed and reenacted by the Legislature.

**Section 3** of the bill provides a public necessity statement, as required by Art. I, s. 24 of the State Constitution, which states it is necessary to protect health-related information that is of a sensitive personal nature concerning individuals. Matters of person health are traditionally private and confidential concerns between the patient, and the health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors. For these reasons, an individual's expectation and right to privacy in all matters relating to his or her personal health and eligibility for paratransit services or the Transportation Disadvantaged Program provided by local government or its service providers necessitates this exemption.

**Section 4** of the bill provides that this act takes effect on becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

This bill creates a public records exemption for personal identifying information contained in records relating to a person's health held by local government entities or their service providers for the purpose of determining eligibility for paratransit services

under Title II of the Americans with Disabilities Act or the Transportation Disadvantaged Program as provided in part I of ch. 427, F.S. Exceptions to the exemption are provided. As the bill creates an exemption to public records requirements, it must contain a statement of public necessity, as well as pass each house of the Legislature with a two-thirds vote.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.