

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 Community Affairs Committee

BILL: SB 2224

INTRODUCER: Community Affairs Committee

SUBJECT: Open Government Sunset Review/Paratransit Services

DATE: March 3, 2008 REVISED: 03/06/08 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill reenacts and expands the public records exemption for personal identifying information relating to an application for paratransit services. The exemption is expanded to include all personal identifying information for individuals receiving services and is applicable to information held by an agency rather than a local government entity so that personal identifying information given to private providers contracting with a unit of government to provide services is exempt.

This bill substantially amends ss. 119.0911 and 119.071, F.S., and repeals subsection (2) of s. 119.0713, F.S., and section 2 of chapter 2003-110, Laws of Florida.

II. Present Situation:

Florida Public Records Law - Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, the electors of Florida approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level. Section 24(a), Art. I of the State Constitution provides that:

Every person has 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 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.

The Public Records Law¹ specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency² records are to be available for public inspection.

Section 119.011(11), F.S., defines the term “public record” to include 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. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge.”³ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁴

Only the Legislature is authorized to create exemptions to open government requirements.⁵ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption⁷ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁸

¹ Chapter 119, F.S.

² “Agency” is defined in s. 119.011(2), F.S., 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 Florida Constitution also establishes a right of access to any public record 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 those records exempted by law or the state constitution.

³ *Shevin v. Byron, Harless, Shaffer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁴ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁵ Article I, s. 24(c) of the State Constitution.

⁶ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999).

⁷ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁸ Art. I, s. 24(c) of the State Constitution.

There is a difference between records that the Legislature makes exempt from public inspection and those that are made confidential and exempt from public inspection. If the Legislature makes a record confidential, with no provision for its release such that its confidential status will be maintained, such record may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁹ If a record is not made confidential but is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁰

Open Government Sunset Review Act¹¹ - The Open Government Sunset Review Act establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created, expanded or maintained only if it serves an identifiable public purpose and if it is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three statutory purposes and if 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. The three statutory purposes are if the exemption:

“[a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”

“[p]rotects 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.”

“[p]rotects 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.”¹²

American with Disabilities Act (ADA) and Paratransit Services¹³ - The ADA requires that public entities that operate a fixed route system must provide paratransit and other special transportation services to disabled individuals, including individuals using wheelchairs, at a level

⁹ Attorney General Opinion 85-62.

¹⁰ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹¹ Section 119.15, F.S.

¹² Section 119.15(6)(b), F.S.

¹³ 49 CFR 37, Subpart F

of service that is comparable to the service provided to persons without disabilities, and the service must be provided in a comparable response time. Origins and destinations must be within corridors that are three-quarters of a mile on each side of the fixed route. Eligible recipients of paratransit and special transportation services include:

- Individuals who are unable to get on or off public transit without assistance.
- Individuals who need to use a wheelchair lift on public transportation but such public transportation isn't available when needed.
- Disabled individuals with a specific impairment that prevents travel to a point of departure or travel from a disembarking location.

Commuter bus, commuter rail, and intercity rail systems are not required to provide complementary paratransit services. Federal law defines "paratransit" as "comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems." A "fixed route system" is defined as "a system of transporting individuals, other than by aircraft, including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including, but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule." Paratransit services for ADA eligible persons are point-of-origin to destination services, and are not required in areas where fixed-route services are not provided.

Medicaid Non-emergency Transportation Program (Medicaid NET Services) - In providing for the administration of the Social Security Act, federal law (42 CFR 431.53) requires that each state plan to provide Medicaid services "specify that the Medicaid agency will ensure necessary transportation for recipients to and from providers; and describe the methods that the agency will use to meet this requirement." In Florida, the agency in charge of the Medicaid program is the Agency for Health Care Administration (AHCA). Provisions in s. 427.0135, F.S., require that AHCA purchase Medicaid transportation services through the Transportation Disadvantaged Program's designated community transportation coordinator (CTC) unless the service is not cost-effective or the CTC does not coordinate Medicaid transportation services.¹⁴ These services are known as the Medicaid Non-emergency Transportation Services (Medicaid NET Services), and in June of 2004, AHCA transferred management of the Medicaid NET System to the Commission for the Transportation Disadvantaged, as a cost-saving measure and to reduce fraud and abuse.¹⁵

Commission for the Transportation Disadvantaged¹⁶ - Part I of ch. 427, F.S., establishes the Commission for the Transportation Disadvantaged (commission) with a purpose of coordinating

¹⁴ As an example, Palm Beach County's "Palm Tran Connection" program provides paratransit services to eligible ADA applicants and other approved transportation disadvantaged individuals, but Medicaid NET Service is provided by MV Transportation, Inc., a private, for-profit corporation which also serves as a CTC in other areas of the state.

¹⁵ "Annual Performance Report, Commission for the Transportation Disadvantaged", January 1 2007

¹⁶ The CTD is housed within the Florida Department of Transportation and consists of seven members appointed by the Governor, five of whom must have experience in operating a business and two of whom must have a disability and use the transportation disadvantaged system. In addition, seven ex officio, nonvoting advisers serve the CTD: the Secretaries of Transportation, Children & Families, Elder Affairs, Veterans' Affairs, and Agency for Health Care Administration; the directors of the Agency for Workforce Innovation and the Agency for Persons with Disabilities, and a county manager or administrator.

transportation services provided to the transportation disadvantaged and a goal of providing cost-effective transportation by qualified community transportation coordinators or operators. The commission contracts with a CTC and a planning agency in each county to ensure that transportation services are provided. In fiscal year 2005-2006, the commission contracted with 48 providers to provide service in all of Florida's 67 counties. Providers included 20 private non-profit entities, 3 private for-profit entities, 19 county governments, 4 public transit authorities, 1 city government, and 1 metropolitan planning organization.

Under s. 427.011, F.S., "transportation disadvantaged" means "persons who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase transportation and are therefore, dependent upon others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or children who are handicapped or high-risk or at-risk as defined in s. 411.202," and "paratransit" means "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 provider of the service. Paratransit services are provided by taxis, limousines, "dial-a-ride", buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed, route nature."

The transportation disadvantaged program is funded through legislative appropriations and by a \$1.50 nonrefundable fee collected on the initial and renewable registration of privately used automobiles, and on the initial and renewable registration of each truck with a net weight of 5,000 pounds or less. The fees are deposited into the Transportation Disadvantaged Trust Fund and used to carry out the commission's responsibility in providing services to the transportation disadvantaged.

Public Records Exemption: Eligibility for Paratransit Services and the Transportation Disadvantaged Program - The paratransit service public records exemption is scheduled for repeal in October 2008 and is required to be reviewed by the Legislature under the provisions of the Open Government Sunset Review Act.

Personal health care information for persons qualified for paratransit services as required under Title II of the ADA or the state's Transportation Disadvantaged Program was not protected until the Florida Legislature enacted ch. 2003-110, Laws of Florida, to provide a public records exemption for all personal identifying information in records relating to a person's health held by local governmental entities or their service providers for the purpose of determining eligibility for paratransit services under the ADA or the state program. The new exemption was created in s. 119.07, F.S., which provides for general public records exemptions. In 2005, the exemption was moved to the newly created s. 119.0713, F.S., and modified to exclude records held by service providers¹⁷ under a general assumption that "local governmental entities" included local governments and their service providers as provided in the definition of "agency" in s. 119.011, F.S.

¹⁷ See s. 35, ch. 2005-251, Laws of Florida, creating s. 119.0713, F.S., entitled "Local government agency exemptions from inspection or copying of public records."

III. Effect of Proposed Changes:

Section 1. Amends s. 119.011, F.S., to provide that “paratransit” means the elements of public transit that provide service between specific origins and destinations selected by the individual user with service provided at a time agreed upon by the user and the service provider.¹⁸

Section 2. Creates paragraph (h) in subsection 5 of s. 119.071, F.S., to provide the following:

- Personal identifying information of an applicant for or recipient of paratransit services which is held by an agency is confidential and exempt from s. 119.07 (1), F.S., and s. 24. Art. I, of the State Constitution.
- The exemption applies to personal identifying information held by an agency before, on, or after the effective date of the exemption.

Exempt personal identifying information may be disclosed if:

- The individual or a representative of the individual provides written consent,
- In a medical emergency and only to the extent that it is necessary to protect the health or life of the individual,
- By court order with a showing of good cause, or
- To another agency in the performance of the agency’s duties and responsibilities.

The exemption is subject to the provisions of the Open Government Sunset Review Act and shall stand repealed on October 2, 2013, unless reviewed and reenacted by the Legislature.

Section 3. Repeals subsection (2) of s. 119.0713, F.S., which contains the current exemption.

Section 4. Provides a statement of public necessity.

Section 5. Repeals section 2 of ch. 2003-110, Laws of Florida.

Sections 6 and 7. Amends ss. 257.34 and 257.35, F.S., to correct cross-references.

Section 8. Provides an effective date of October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

In accordance with a review conducted under the Open Government Sunset Review Act, this bill repeals subsection (2) of s. 119.0713, F.S., and creates paragraph (h) in subsection (5) of s. 119.071, F.S. to substantially expand the existing exemption by including personal identifying information provided to agencies for the delivery of

¹⁸ See s. 427.011(9), F.S., which further provides that “paratransit service is provided by taxis, limousines, “dial-a-ride”, buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature.”

paratransit services as well as personal identifying information provided by an applicant to determine eligibility for paratransit services. The bill complies with the requirements of s. 24, Art. I, of the State Constitution, and will require a two-thirds vote of each house of the Legislature for passage.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons receiving paratransit services will have additional protection as information identifying a recipient's home address, telephone number, and dates, times, and locations of service will be protected.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

Barcode #644906 by Community Affairs Committee on March 6, 2008:

The statement of public necessity is revised to further clarify and explain why personal identifying information for persons applying for or receiving paratransit services should be made confidential and exempt from public-records requirements.