

**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 Governmental Oversight and Accountability Committee

**BILL:** CS/SB 688

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senator Gelber

**SUBJECT:** Public Records/Public Transit Provider

**DATE:** February 2, 2010      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	<b>Favorable</b>
2.	Naf	Wilson	GO	<b>Fav/CS</b>
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill creates an exemption from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for personal identifying information held by public transit providers<sup>1</sup> for the purpose of prepaying transit fares or acquiring a prepaid transit fare card.

The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act.<sup>2</sup>

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.<sup>3</sup>

This bill creates s. 341.3026, F.S.

<sup>1</sup> As defined in s. 341.031, F.S.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 24(c), Art. I of the State Constitution.

## II. Present Situation:

### Florida's 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, Florida voters 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 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.

The Public Records Law is contained in chapter 119, F.S., and 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<sup>4</sup> 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 agency<sup>5</sup> records are to be available for public inspection.

Section 119.011(12), 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."<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

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<sup>4</sup> Section 119.011(12), F.S., defines "public records" to include "all documents, papers, letters, maps, books, tapes, photographs, film, 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."

<sup>5</sup> Section 119.011(2), F.S., defines "agency" as "...any state, county, district, authority, or municipal officer, department, division, 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."

<sup>6</sup> *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640(Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</sup> 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.<sup>9</sup> A bill enacting an exemption<sup>10</sup> may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.<sup>11</sup>

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.<sup>12</sup> If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>13</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act established in s. 119.15, F.S., provides 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.

### **Disclosure of Personal Information for Transportation Purposes**

Section 338.155(6), F.S., exempts from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution personal identifying information the Department of Transportation, a county, or an expressway authority obtains for the payment of tolls. This statute has been interpreted to include personal identifying information “on an application and agreement for a transponder that enables travelers to prepay toll collections and avoid stopping for tolls when such service is paid for by credit card, charge card, or check.”<sup>14</sup> This exemption does not apply to information provided by bus or rail passengers. Therefore, while there is an exemption for a program such as SunPass,<sup>15</sup> there is currently no such exemption for a transit payment mechanism like Miami-Dade’s EASY Card.<sup>16</sup>

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<sup>8</sup> Article I, s. 24(c) of the State Constitution.

<sup>9</sup> *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).

<sup>10</sup> Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>11</sup> Section 24(c), Art. I of the State Constitution

<sup>12</sup> Attorney General Opinion 85-62, August 1, 1985.

<sup>13</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d. 289 (Fla. 1991).

<sup>14</sup> Fla. Att’y Gen. Op. 99-61 (1999).

<sup>15</sup> See <http://www.sunpass.com/>.

<sup>16</sup> See <http://easycard.miamidade.gov/>.

### III. Effect of Proposed Changes:

This bill creates an exemption from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for personal identifying information held by public transit providers for the purpose of prepaying transit fares or acquiring a prepaid transit fare card or similar device. The bill provides that the term “public transit provider” is defined as in s. 341.031, F.S.<sup>17</sup>

The exemption is subject to the provisions of the Open Government Sunset Review Act<sup>18</sup> and will stand repealed on October 2, 2015, unless reviewed and reenacted by the Legislature.

The bill provides justification for the public necessity of the exemption. The public necessity statement explains the benefits of a prepaid transit fare system, including efficiency and time and costs savings. The public necessity statement states that the effective administration of the prepayment option would be hindered without this exemption because individuals would be less inclined to use that payment method if their personal information were made available to the public. The public necessity statement further states that this exemption puts individuals who prepay transit fares using a prepaid transit fare card on an equal footing with those who pay cash.

### IV. Constitutional Issues:

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

None.

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

##### **Vote Requirement**

Section 24(c), Art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

##### **Subject Requirement**

Section 24(c), Art. I of the State Constitution requires the Legislature to create public records or public meetings exemptions in legislation separate from substantive law changes. This bill complies with that requirement.

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<sup>17</sup> Section 341.031, F.S. (defining a public transit provider as “a public agency providing public transit service, including rail authorities created in chapter 343”).

<sup>18</sup> Section 119.15, F.S.

**Public Necessity Statement**

Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**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.)**CS by Governmental Oversight and Accountability on February 2, 2010:**

The committee substitute:

- Changes the level of protection for the exempted public records from confidential and exempt to merely exempt;
- Removes the exemption for information pertaining to the location or travel patterns of a person using a prepaid transit fare card;
- Relocates the exemption from s. 119.071, F.S., to a newly created section of law in ch. 341, F.S.; and
- Makes clarifying grammatical changes.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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