

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7065 PCB THSS 12-02 Pub. Rec./Personal Identifying Information/Toll Facilities
SPONSOR(S): Transportation & Highway Safety Subcommittee, Drake
TIED BILLS: **IDEN./SIM. BILLS:** SB 1284

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|----------|--|
| Orig. Comm.: Transportation & Highway Safety Subcommittee | 15 Y, 0 N | Johnson | Kruse |
| 1) State Affairs Committee | 14 Y, 0 N, As CS | Thompson | Hamby |

SUMMARY ANALYSIS

Current law provides a public records exemption for personal identifying information provided to, acquired by, or in the possession of the Department of Transportation (DOT), a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities. This prepayment system is the electronic transponder method of toll payment otherwise known as "SunPass."

The bill expands the current public records exemption to include personal identifying information held by DOT, a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and other amounts due. This would include personal identifying information of customers who use the post-payment method of toll payment otherwise known as "Toll-By-Plate."

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a current public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Article I, s. 24(a) of the State 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. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State 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.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

Electronic Toll Payment

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.³ The Department of Transportation (DOT) is authorized to adopt rules relating to the payment, collection, and enforcement of tolls, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.⁴ Consequently, DOT has implemented two programs for electronic toll collections.

SunPass⁵ is an electronic system of toll collection⁵ accepted on all Florida toll roads and nearly all toll bridges. SunPass utilizes a prepaid account system and electronic devices called transponders that attach to the inside of a car's windshield. When a car equipped with SunPass goes through a tolling location, the transponder sends a signal and the toll is deducted from the customer's prepaid account. SunPass account information includes, license plate number, address, and credit card information.⁶

Toll-By-Plate⁷ is an image based system of toll collection available on the HEFT (Homestead Extension of Florida's Turnpike) from Florida City to Miramar in Miami- Dade County. Toll-By-Plate takes a photo of a license plate as a vehicle travels through a Turnpike tolling location and mails a monthly bill for the tolls, including a \$2.50 administrative charge, to the registered owner of the vehicle. Accounts can be

¹ Section 24(c), Art. I of the State Constitution.

² Section 119.15, F.S.

³ See s. 338.155(1), F.S. The exemptions include toll employees on official state business, state military personnel on official military business, persons authorizing resolution for bonds to finance the facility, persons using the toll facility as a required detour route, law enforcement officers or persons operating a fire or rescue vehicle when on official business, funeral processions of law enforcement officers killed in the line of duty, and persons with a certified disability that substantially impairs that person's ability to put tolls in the toll basket.

⁴ Section 338.155(1), F.S.

⁵ Rule 14-15.0081, F.A.C.

⁶ Information on SunPass is available at, <http://www.floridasturnpike.com/all-electronictolling/SunPass.cfm> (Last visited January 30, 2012).

⁷ Rule 14-100.005, F.A.C., established the Florida Department of Transportation Toll-By-Plate program in 2010.

set up as pre-paid or post-paid.⁸ Pre-paid accounts are administered through the SunPass system and post-paid accounts are administered through an invoice system. Invoice accounts may require name, address, email, drivers license number, day time phone number, and credit and debit card numbers.⁹

Toll Exemption

Currently, personal identifying information provided to, acquired by, or in the possession of DOT, a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities charges is exempt¹⁰ from public records requirements.¹¹ This exemption does not include personal identifying information related to the post-payment of electronic toll facilities by Toll-By-Plate customers.

Proposed Changes

The bill expands the current public records exemption to include personal identifying information held by the Department of Transportation (DOT), a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and other amounts due for the use of toll facilities to DOT, a county, or an expressway authority. This would include personal identifying information related to the post-payment of electronic toll facilities by Toll-By-Plate customers.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹²

B. SECTION DIRECTORY:

Section 1 amends s. 338.155, F.S., related to the payment of tolls on toll facilities.

Section 2 provides a finding of public necessity.

Section 3 provides an effective date of July 1, 2012.

II. 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:

⁸ Information on toll-by-plate is available at, <http://www.floridasturnpike.com/all-electronic Tolling/TOLL-BY-PLATE.cfm> (Last visited January 30, 2012).

⁹ Information on toll-by-plate accounts can be found at, <https://www.tollbyplate.com/displaySelectCustomerTypeRegisterAccountNewAccount> (Last visited January 30, 2012).

¹⁰ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹¹ Chapter 96-178, L.O.F.; codified as s. 338.155(6), F.S.

¹² Section 24(c), Art. I of the State Constitution.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Public Necessity Statement

The exemption section of the bill classifies personal identifying information as exempt; however, the public necessity statement uses the term confidential. There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. Lines 41 and 42 may need an amendment to conform the public necessity statement to the public record exemption.

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.¹³ The bill does not contain a provision requiring retroactive application. As such, the public record exemption would apply prospectively. The Toll-By-Plate program has been available on the southern 47 miles of Florida's Turnpike in Miami-Dade since it was established in 2010.¹⁴

¹³ *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

¹⁴ Information received by telephone from Cindy Price, the Florida Department of Transportation, January 30, 2012.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2012, the State Affairs Committee adopted one amendment to HB 7065. The amendment conforms the public necessity statement to the public record exemption, making it clear the information is exempt only, and not confidential.