

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 Committee on Governmental Oversight and Accountability

BILL: SB 1424

INTRODUCER: Senator Evers

SUBJECT: Public Records/Personal Identifying Information/Payment of Tolls

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Favorable
2.	Naf	McVaney	GO	Favorable
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 1424 expands an existing public records exemption for personal identifying information held by the Department of Transportation, 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. Specifically, this bill removes references to specific payment types and instead provides that the exemption applies to personal identifying information *of drivers who use toll facilities in the state* that is held by the Department of Transportation, a county, or an expressway authority for the purpose of *paying, prepaying, or collecting tolls and associated charges*.

The bill provides that the expanded exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

This bill amends section 338.155 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "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." Section 119.011(2), F.S., defines "agency" to mean 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 Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. 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 (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Electronic Toll Payment

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.¹³ 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.¹⁴ DOT has implemented two programs (SunPass and Toll-By-Plate) for electronic toll collections.

SunPass¹⁵ is an electronic system of toll collection 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 the license plate number, address, and credit card information.¹⁶

The Toll-By-Plate¹⁷ program, established by DOT in 2010, is an image based system of toll collection available on the 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 an administrative charge, to the registered owner of the vehicle. Accounts can be set up as pre-paid or post-paid.¹⁸ Accounts may require name, address, email, driver's license number, day time phone number, and credit and debit card numbers.¹⁹

Public Records Exemption: Electronic Payment of Tolls

Section 338.155(6), F.S., provides that 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 exempt²⁰ from public records requirements. This provision was first adopted in 1996.²¹

¹³ See s. 338.155(1), F.S. The exemptions generally 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 handicapped persons.

¹⁴ Section 338.155(1), F.S.

¹⁵ Rule 14-15.0081, F.A.C.

¹⁶ Information on SunPass is available at, <http://www.floridasturnpike.com/all-electronictolling/SunPass.cfm> (last visited March 12, 2013).

¹⁷ Rule 14-100.005, F.A.C.

¹⁸ Information on toll-by-plate is available at, <http://www.floridasturnpike.com/all-electronictolling/TOLL-BY-PLATE.cfm> (Last visited March 12, 2013).

¹⁹ Information on toll-by-plate accounts can be found at,

<https://www.tollbyplate.com/displaySelectCustomerTypeRegisterAccountNewAccount> (Last visited March 12, 2013).

²⁰ 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

Recently, DOT has expanded its use of electronic toll collection with the Toll-By-Plate video billing. As a consequence, the current public records exemption does not protect personal identifying information related to the post-payment of electronic toll facilities by Toll-By-Plate customers.

III. Effect of Proposed Changes:

The bill amends s. 338.155(6), F.S., to expand the existing public records exemption for personal identifying information held by the Department of Transportation, 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. Specifically, this bill removes references to specific payment types and instead provides that the exemption applies to personal identifying information *of drivers who use toll facilities in the state* that is held by the Department of Transportation, a county, or an expressway authority for the purpose of *paying, prepaying, or collecting tolls and associated charges*. This would include personal identifying information of Toll-By-Plate customers.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2018, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill's effective date is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created or expanded public records or public meetings exemption. Because this bill expands a public necessity statement, it requires a two-thirds vote for passage.

Public Necessity Statement

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).

²¹ Chapter 96-178, L.O.F.; codified as s. 338.155(6), F.S.

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill expands 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:

This bill could create a minimal fiscal impact on state and local agencies with staff responsible for complying with public records requests as staff could require training related to the expansion of the public records exemption. In addition, agencies could incur costs associated with redaction of the protected information prior to releasing a record. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of an agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

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.²² The bill does not contain a provision requiring retroactive application. Therefore, the public records exemption would apply prospectively, but the Toll-By-Plate program began in 2010.²³

Applicability of Exemption to “Drivers”

The expanded public records exemption applies to drivers who use toll facilities in this state. However, the driver of a vehicle may not necessarily be the person to whom a Toll-by-Plate

²² *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

²³ Information received from the Florida Department of Transportation, March 13, 2013 (email on file with the Transportation and Highway Safety Subcommittee).

account is registered. Therefore, the Legislature may wish to consider removing reference to “drivers” in the expanded exemption.

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:**

None.

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