



## 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.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> 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 provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

### Open Government Sunset Review Act

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.<sup>10</sup> It

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> 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)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> 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).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> 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

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.<sup>11</sup>

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.<sup>12</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It 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; or
- It protects trade or business secrets.<sup>13</sup>

The Act also requires specified questions to be considered during the review process.<sup>14</sup>

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.<sup>15</sup> A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception<sup>16</sup> to the exemption is created.<sup>17</sup>

### **Paratransit Services**

The Americans with Disabilities Act (ADA) requires public entities operating non-commuter fixed route transportation services to provide paratransit<sup>18</sup> and other special transportation

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.).

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>15</sup> An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

<sup>16</sup> An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

<sup>17</sup> *See State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

<sup>18</sup> Federal law defines "paratransit" to mean "comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems" (49 C.F.R. § 37.3). Florida law defines "paratransit" to

services to individuals who are unable to use the fixed route system.<sup>19</sup> The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements for state and local entities to administer a process for determining eligibility. Eligible recipients for such services include:

- Individuals unable to get on or off public transit without assistance;
- Individuals who use a wheelchair lift on public transportation but such transportation is not available when needed; and
- Disabled individuals with a specific impairment that prevents travel to a point of departure or travel from a disembarking location.<sup>20</sup>

Federal law also requires each state plan to provide Medicaid services to indicate 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.”<sup>21</sup> The Medicaid agency in Florida is the Agency for Health Care Administration (AHCA).

Florida law requires each agency that purchases transportation services for the transportation disadvantaged, including AHCA, to pay the rates established in the service plan or negotiated statewide contract, unless a more cost-effective method exists or if the community transportation coordinator (CTC) does not coordinate such services.<sup>22</sup> These services are referred to as Medicaid Non-Emergency Transportation Services.

The Commission for the Transportation Disadvantaged<sup>23</sup> (commission) manages such services.<sup>24</sup> The commission contracts with a CTC and a planning agency in each county to provide transportation services.<sup>25</sup> The local coordinating board<sup>26</sup> assists the CTC in establishing eligibility guidelines.<sup>27</sup> Applicants must submit an application that requires the disclosure of medical and disability information, among other information.<sup>28</sup>

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

<sup>19</sup> 49 C.F.R. § 37, Subpart F.

<sup>20</sup> 49 C.F.R. § 37.123.

<sup>21</sup> 42 C.F.R. § 431.53.

<sup>22</sup> See s. 427.0135, F.S.

<sup>23</sup> Part I of ch. 427, F.S., establishes the commission for the purpose of coordinating transportation services provided to the transportation disadvantaged and a goal of providing cost-effective transportation by qualified community transportation coordinators or operators. The commission is housed within the Department of Transportation and consists of seven members appointed by the Governor. In addition, a technical working group advises the commission on issues of importance to the state. Section 427.012, F.S.

<sup>24</sup> The commission has been providing transportation for AHCA under a fixed fee basis since 2004. The current multi-year contract between the commission and AHCA was executed in December 2008. See “2012 Annual Performance Report,” Florida Commission for the Transportation Disadvantaged, at page 13, available at <http://www.dot.state.fl.us/ctd/docs/APR/2012/APR%202012%20Final.pdf> (last visited March 17, 2013).

<sup>25</sup> See ss. 427.013 and 427.0155, F.S.

<sup>26</sup> The local coordinating board is appointed and staffed by the metropolitan planning organization or designated official planning agency, and oversees and annually evaluates the CTC (see the “2012 Annual Performance Report” referenced in footnote 24, at page 12).

<sup>27</sup> Sections 427.0155(7) and 427.0157(4), F.S.

<sup>28</sup> See, for example, the Lake County application, available at

[http://www.lakecountyfl.gov/pdfs/Community\\_Services/transportation\\_disadvantaged/aplication\\_for\\_paratransit\\_services.pdf](http://www.lakecountyfl.gov/pdfs/Community_Services/transportation_disadvantaged/aplication_for_paratransit_services.pdf)

### **Public Records Exemption Under Review**

Current law provides that personal identifying information of an applicant for or a recipient of paratransit services, held by an agency, is confidential and exempt from public records requirements.<sup>29</sup> The confidential and exempt information must be disclosed:

- With the express written consent of the applicant or recipient, or the legally authorized representative of such applicant or recipient;
- In a medical emergency, but only to the extent that is necessary to protect the health or life of the applicant or recipient;
- By court order upon a showing of good cause; or
- To another agency in the performance of its duties and responsibilities.<sup>30</sup>

Pursuant to the Open Government Sunset Review Act, the public records exemption will repeal on October 2, 2013, unless reenacted by the Legislature.

### **III. Effect of Proposed Changes:**

This bill deletes the public records exemption's repeal date, thereby reenacting the public records exemption for personal identifying information of an applicant for or a recipient of paratransit services that is held by an agency.

The bill also makes non-substantive drafting clarifications to the exemption.

The bill's effective date is October 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 an action requiring the expenditure 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:**

This bill reenacts but does not expand the scope of an existing public records exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is *not* required for passage.

#### **C. Trust Funds Restrictions:**

None.

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f (last visited March 17, 2013), and the Collier Area application, available at <http://www.colliergov.net/Modules/ShowDocument.aspx?documentid=39276> (last visited March 17, 2013).

<sup>29</sup> Section 119.071(5)(h)1., F.S.

<sup>30</sup> Section 119.071(5)(h)3., F.S.

**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 March 21, 2013:**

The CS differs from the original bill in that it makes non-substantive drafting clarifications to the public records exemption under review.

## B. Amendments:

None.