

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 Transportation

BILL: SPB 7020

INTRODUCER: For consideration by the Committee on Transportation

SUBJECT: Public Records/Personal Information/Paratransit Services

DATE: March 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Eichin		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7020 reenacts an existing public records exemption found in s. 119.071(5)(h), F.S., which exempts from public inspection or copying, the personal identifying information of applicants for, or recipients of paratransit services. This exemption is subject to review under s. 119.115, F.S., the Open Government Sunset Review Act, and will sunset on October 2, 2013 unless saved from repeal through reenactment by the Legislature. Although the bill removes a provision scheduling a future repeal of the exemption, the bill does not expand the scope of the existing exemption, so it does not require a two-thirds vote.

This bill substantially amends s. 119.071, F.S.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It 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 Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or open meetings requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ 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 provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ 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)).

⁶ Section 119.07(1)(a), F.S.

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ 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).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

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.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

The Act also requires specified questions to be considered during the review process.¹⁷

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.¹⁸ 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 exception¹⁹ to the exemption is created.

¹³ 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.).

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ 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?

¹⁸ 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.

¹⁹ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

Paratransit Services

American with Disabilities Act (ADA) and Paratransit Services²⁰ - 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 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.²¹ 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.²²

²⁰ 49 CFR 37, Subpart F

²¹ 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.

²² "Annual Performance Report, Commission for the Transportation Disadvantaged", January 1 2007.

Commission for the Transportation Disadvantaged²³ - Part I of ch. 427, F.S., establishes the Commission for the Transportation Disadvantaged (commission) with a 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 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.

Exemption Under Review

Eligibility for Paratransit Services and the Transportation Disadvantaged Program - The paratransit service public records exemption is scheduled for repeal in October 2013 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 providers²³ 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

²³ 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.

was moved to the newly created s. 119.0713, F.S., and modified to exclude records held by service providers²⁴ 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.

III. Effect of Proposed Changes:

The bill reenacts s. 119.071(5)(h), F.S., which exempts from public inspection or copying, personal identifying information of applicants or users of paratransit services held by an agency.

The bill removes a provision scheduling a future repeal of the exemption.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house. This bill does not expand an existing public records or open meetings exemption; therefore, a two-thirds vote is not required.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. This bill does not expand an existing public records or open meetings exemption; therefore, a public necessity statement is not required.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁴ 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.”

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.)

None.

B. Amendments:

None.