

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7107      PCB GVOPS 13-05      PCB GVOPS 13-05      OGSR Paratransit Services

**SPONSOR(S):** Government Operations Subcommittee, Fullwood

**TIED BILLS:**            **IDEN./SIM. BILLS:** CS/SB 1768

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	13 Y, 0 N	Williamson	Williamson
1) State Affairs Committee	16 Y, 0 N	Williamson	Camechis

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Americans with Disabilities Act of 1990 requires public entities operating non-commuter fixed route transportation services to provide paratransit and other special transportation services to individuals who are unable to use the fixed route system. The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements on state and local entities to administer a process for determining eligibility.

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 record requirements. The confidential and exempt information must be disclosed in certain circumstances.

The bill reenacts this public record exemption, which will repeal on October 2, 2013, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> 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 to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Paratransit Services

The Americans with Disabilities Act of 1990 (ADA) requires public entities operating non-commuter fixed route transportation services to provide paratransit<sup>4</sup> and other special transportation services to individuals who are unable to use the fixed route system.<sup>5</sup> The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements on 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>6</sup>

Federal law also requires that each state plan to provide Medicaid services indicate that the Medicaid agency "will ensure necessary transportation for recipients to and from providers; and describe the

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</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 CFR. 37.3) Florida law defines "paratransit" to 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." (Section 427.011(9), F.S.)

<sup>5</sup> 49 CFR 37, Subpart F.

<sup>6</sup> 49 CFR 37.123.

methods that the agency will use to meet this requirement.”<sup>7</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>8</sup> These services are referred to as Medicaid Non-Emergency Transportation Services.

The Commission for the Transportation Disadvantaged<sup>9</sup> (commission) manages such services.<sup>10</sup> The commission contracts with a CTC and a planning agency in each county to provide transportation services.<sup>11</sup> The local coordinating board<sup>12</sup> develops applicant-qualifying criteria. The CTC uses the qualifying criteria to determine eligibility for services.<sup>13</sup> Applicants must submit an application that requires the disclosure of medical and disability information, among other information.

#### Public Record Exemption under Review

Current law provides that personal identifying information of an applicant for or a recipient of paratransit services, held by an agency,<sup>14</sup> is confidential and exempt<sup>15</sup> from public record requirements.<sup>16</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>17</sup>

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

During the 2012 interim, subcommittee staff sent questionnaires to state and local government agencies as part of the Open Government Sunset Review process. Those agencies responding to the

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<sup>7</sup> 42 CFR 431.53

<sup>8</sup> See s. 427.0135, F.S.

<sup>9</sup> Part I of chapter 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 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>10</sup> The commission has been providing transportation for AHCA under a fixed fee basis since 2004. The current multi-year contract between AHCA and the commission was executed in December 2008. *2012 Annual Performance Report Florida Commission for the Transportation Disadvantaged*, at 13 (January 1, 2013). The report is available at:

<http://www.dot.state.fl.us/ctd/programinfo/commissioninformation/commissioninformatton.htm> (last visited March 10, 2013).

<sup>11</sup> See ss. 427.013 and 427.0155, F.S.

<sup>12</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.

<sup>13</sup> See ss. 427.0155 and 427.0157, F.S.

<sup>14</sup> Section 119.011(2), F.S., defines “agency” to mean “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.”

<sup>15</sup> 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).

<sup>16</sup> Section 119.071(5)(h)1., F.S.

<sup>17</sup> Section 119.071(5)(h)3., F.S.

questionnaire indicated that there is a public necessity to continue to protect the confidential and exempt information, and recommended reenactment of the public record exemption under review.

### **Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for personal identifying information of an applicant for or a recipient of paratransit services, which is held by an agency. The bill also makes clarifying changes.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for personal identifying information of an applicant for or recipient of paratransit services.

Section 2 provides an effective date of October 1, 2013.

## **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:

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 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.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.