

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: SB 350

INTRODUCER: Senator Abruzzo

SUBJECT: Public Records/Yellow Dot Critical Motorist Medical Information Program

DATE: December 13, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	Pre-meeting
2.			HP	
3.			GO	
4.			RC	

I. Summary:

Senate Bill 350 creates a public record exemption for participants' personal identifying information in a yellow dot critical motorist medical information program (with the passage of SB 262 or HB 17) within counties choosing to participant in such program.

The bill also provides that the public records exemption is subject to repeal on July 1, 2019, unless reviewed and reenacted. It also provides a statement of public necessity as required by the Florida Constitution.

II. Present Situation:

The yellow dot critical motorist medical information program proposed in SB 262/HB 17, is a free and voluntary program designed to assist emergency medical responders and other emergency professionals in providing life-saving medical attention to motorist in a vehicle crash. The bills authorize the governing body of a county or municipality to create the yellow dot program. Under the law, counties or groups of counties may solicit sponsorships from businesses and not-for-profits to cover expenses, including the yellow dot kit (the yellow dot to be placed on the rear passenger's window alerts emergency professionals that a corresponding yellow folder is in the glove box, the personal identifying information application). Since the yellow dot kits are distributed by the county or counties, the counties would become the custodians of applicant's personal records. Therefore, should SB 262/HB 17 become law, the records become subject to public records requests, and could result in invasion of one's privacy.

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.

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 "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.

Currently, the yellow dot program does not exist in the State of Florida. Thus, the program has never been subject to s. 119.07, F.S., and s. 24(a), Article I of the State Constitution.

III. Effect of Proposed Changes:

Section 1, creates a public records exemption for participants' in a yellow dot critical motorist medical information program, and authorizes a county's governing body, participating in such program, responsibility of one's personal identifying information.

The bill also subjects the yellow dot critical motorist medical information program to the Open Government Sunset Review Act, based on one's personal identifying information, in accordance with s. 119.15, F.S., and s. 24(a), Article I of the State Constitution and will repeal on July 1, 2019, unless the Legislature repeal and reenacts.

Section 2, provides necessity for a yellow dot critical motorist's personal identifying information, held by a county's governing body to be exempt from public records disclosure. If participants in such program were not exempt from disclosure, anybody could inspect and copy documentation that identifies the program participant. Thus, the accessibility of such information to the public would result in the invasion of the program participant's privacy. Therefore, the importance of protecting personal identifying information of a participant in such program prevents victimization of these volunteers only interested in providing medical information to assist first responders and emergency professionals in their treatment.

This act shall take effect on the same date that SB 262 or HB 17, which is July 1, 2014, or similar legislation is adopted in the same legislative session or an extension thereof, becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.