

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 7007	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Economic Affairs Committee; Transportation & Highway Safety Subcommittee; Artiles and others	117 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/SB 616	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/HB 7007 passed the House on March 12, 2014, and subsequently passed the Senate on April 25, 2014. The bill expands the current public record exemption for SunPass customers to include the personal identifying information of customers who use the post-payment method of toll payment known as the Toll-By-Plate system. It also adds municipalities to the current list of public records custodians to whom the exemption applies.

The exemption is retroactive, applying to the personal identifying information of Toll-By-Plate customers before, on, or after the effective date.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill could create a minimal fiscal impact on state and local governments. See FISCAL COMMENTS section.

This bill expands a public record exemption. Therefore, as required by the Florida Constitution, it passed by a two-thirds vote of the members present and voting in each house.

The bill was approved by the Governor on June 20, 2014, ch. 2014-217, L.O.F., and will become effective upon becoming law.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Current Situation

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person the right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> 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.

##### Electronic Toll Payment

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.<sup>3</sup> 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.<sup>4</sup> DOT has implemented two electronic toll collection systems known as SunPass and Toll-By-Plate.

SunPass<sup>5</sup> uses a prepaid method of electronic toll collection that is accepted on all Florida toll roads and nearly all toll bridges. SunPass utilizes prepaid accounts 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.<sup>6</sup>

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> 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.

<sup>4</sup> Section 338.155(1), F.S.

<sup>5</sup> Rule 14-15.0081, F.A.C.

<sup>6</sup> Information on SunPass is available at: <http://www.floridasturnpike.com/all-electronictolling/SunPass.cfm> (last visited Dec. 9, 2013).

Toll-By-Plate,<sup>7</sup> established by DOT in 2010, uses an image-based method of toll collection available on the southern 47 miles of Florida's Turnpike in Miami-Dade. The Miami-Dade Expressway Authority and the Tampa-Hillsborough Expressway Authority have their own toll-by-plate systems. 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.<sup>8</sup> Accounts may require name, address, email, driver's license number, day time phone number, and credit and debit card numbers.<sup>9</sup>

#### Public Record 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 exempt<sup>10</sup> from public record requirements. This provision was first adopted in 1996.<sup>11</sup>

Recently, DOT has expanded its use of electronic toll collection with the Toll-By-Plate video billing system. The current public record exemption for SunPass customers does not protect the personal identifying information of Toll-By-Plate customers. Also, municipalities are not included in the current list of public records custodians to whom the exemption applies.

#### **Proposed Changes**

The bill amends s. 338.155(6), F.S., to expand the current public record exemption for SunPass customers to include the personal identifying information of Toll-By-Plate customers. The bill also adds municipalities to the current list of public records custodians to whom the exemption applies.

The exemption is retroactive, applying to the personal identifying information of Toll-By-Plate customers before, on, or after the effective date.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>7</sup> Rule 14-100.005, F.A.C.

<sup>8</sup> Information on toll-by-plate is available at: <http://www.floridasturnpike.com/all-electronictolling/TOLL-BY-PLATE.cfm> (last visited Dec. 9, 2013).

<sup>9</sup> Information on toll-by-plate accounts can be found at:

<https://www.tollbyplate.com/displaySelectCustomerTypeRegisterAccountNewAccount> (last visited Dec. 10, 2013).

<sup>10</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 683 (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>11</sup> Chapter 96-178, L.O.F.; codified as s. 338.155(6), F.S.

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The 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 record exemption. In addition, an agency could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.