

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: CS/SB 7000

INTRODUCER: Governmental Oversight and Accountability Committee and Community Affairs Committee

SUBJECT: OGSR/Public Transit Provider

DATE: February 3, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Stearns	Yeatman		<b>CA SPB 7000 as introduced</b>
1.	Kim	McVaney	GO	<b>Fav/CS</b>
2.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 7000 reenacts an exemption from the public records access requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S., for personal identifying information held by public transit providers<sup>1</sup> for the purpose of prepaying transit fares or acquiring a prepaid transit fare card. The bill deletes the requirement that the exemption be reviewed pursuant to the Open Government Sunset Review Act.

The CS makes technical changes by transferring and renumbering s. 341.3026, F.S., to s. 341.0521, F.S., and deleting a cross-reference to a definition.

**II. Present Situation:**

**Public Records and Open Meetings Requirements**

The Florida Constitution provides that the public has the right to access government records and meetings. The public may 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>2</sup> The public also has a right to be afforded notice and access to meetings of any

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<sup>1</sup> As defined in s. 341.031, F.S.

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

collegial public body of the executive branch of state government or of any local government.<sup>3</sup> The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided by the Constitution.<sup>4</sup>

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 Act<sup>5</sup> guarantees every person's right to inspect and copy any state or local government public record.<sup>6</sup> The Sunshine Law<sup>7</sup> 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.<sup>8</sup>

The Legislature may create an exemption to public records or open meetings requirements.<sup>9</sup> An exemption must specifically state the public necessity justifying the exemption<sup>10</sup> and must be tailored to accomplish the stated purpose of the law.<sup>11</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>12</sup> The OGSR provides that an exemption automatically repeals on October

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<sup>3</sup> FLA. CONST., art. I, s. 24(b).

<sup>4</sup> FLA. CONST., art. I, s. 24(b).

<sup>5</sup> Chapter 119, F.S.

<sup>6</sup> Section 119.011(12), F.S., defines "public record" 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. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to s. 11.0431, F.S.

<sup>7</sup> Section 286.011, F.S.

<sup>8</sup> 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 the Florida Constitution. Article III, s. 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, 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.

<sup>9</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. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> FLA. CONST., art. I, s. 24(c).

<sup>12</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>13</sup>

The OGSR 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.<sup>14</sup> An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>15</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>16</sup> or
- It protects trade or business secrets.<sup>17</sup>

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.<sup>18</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>19</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>20</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>21</sup>

### **Personal Identifying Information Held by a Public Transit Provider**

Section 341.3026, F.S., provides a public records exemption for personal identifying information held by a public transit provider<sup>22</sup> for the purpose of facilitating the prepayment of transit fares or

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<sup>13</sup> Section 119.15(3), F.S.

<sup>14</sup> Section 119.15(6)(b), F.S.

<sup>15</sup> Section 119.15(6)(b)1., F.S.

<sup>16</sup> Section 119.15(6)(b)2., F.S.

<sup>17</sup> Section 119.15(6)(b)3., F.S.

<sup>18</sup> Section 119.15(6)(b), F.S.

<sup>19</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>20</sup> FLA. CONST., art. I, s. 24(c).

<sup>21</sup> Section 119.15(7), F.S.

<sup>22</sup> As defined in s. 341.031, F.S, which states that "public transit provider" means a public agency providing public transit service, including rail authorities created in Chapter 343, F.S.

the acquisition of a prepaid transit fare card or similar device. According to survey responses<sup>23</sup> from public transit providers obtained by the Community Affairs Committee, such information frequently includes the full names of transit riders, their personal or business addresses, phone numbers, email addresses, Social Security numbers, credit card information, driver's license numbers, and dates of birth.

Of those entities that responded to the survey, none recommended that the exemption be repealed.

The current exemption will expire on October 2, 2015, pursuant to the OGSR, unless saved by the Legislature through reenactment.

### III. Effect of Proposed Changes:

**Section 1** transfers s. 341.3026, F.S., and renumbers it as s. 341.0521, F.S. By relocating the exemption, the definition of "public transit provider" will be applicable.<sup>24</sup> Thus, the cross-reference to "s. 341.031" will no longer be necessary.

This section also deletes the scheduled repeal of the public records exemption. As a result, the covered records will remain exempt from disclosure.

**Section 2** provides the act shall take effect on October 1, 2015.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

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<sup>23</sup> Survey results are on file with the Senate Community Affairs Committee.

<sup>24</sup> Section 341.031, F.S., provides that definitions relating to the Florida Public Transit Act are limited to s. 341.011, F.S. through s. 341.061, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 341.3026 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.)

**CS/SB 7000 by Governmental Oversight and Accountability:**

CS/SB 7000 makes several technical changes to s. 341.3026, F.S., by renumbering this section as s. 341.0521, F.S. By relocating the exemption, the definition of “public transit provider” will be applicable. As a result, the cross-reference to “s. 341.031” will no longer be necessary.

B. Amendments:

None.