

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

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| BILL #: | HB 7011 | FINAL HOUSE FLOOR ACTION: | |
| SPONSOR(S): | Government Operations Subcommittee; Fant | 118 Y's | 0 N's |
| COMPANION BILLS: | CS/SB 7000 | GOVERNOR'S ACTION: | Approved |

SUMMARY ANALYSIS

HB 7011 passed the House on March 18, 2015, and subsequently passed the Senate on April 1, 2015.

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.

Current law provides a public record exemption for certain information held by a public transit provider. Specifically, personal identifying information held by a public transit provider for the purpose of facilitating the prepayment of transit fares or the acquisition of a prepaid transit fare card is exempt from public record requirements.

The bill reenacts the public record exemption, which will repeal on October 2, 2015, if this bill does not become law. It also transfers the public record exemption to the Florida Public Transit Act.

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

The bill was approved by the Governor on June 11, 2015, ch. 2015-160, L.O.F., and will become effective on October 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ (Act) 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.²

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:³

- 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 and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Public Transit

The Florida Public Transit Act⁶ provides, in part, that the Department of Transportation (department) must develop a statewide plan that provides for public transit and intercity bus service needs at least five years in advance.⁷ The plan must incorporate plans adopted by local and regional planning agencies that are consistent, to the maximum extent feasible, with adopted strategic policy plans and approved local government comprehensive plans for the region and units of local government covered by the plan.⁸ In addition, the department must coordinate activities between public and private entities on matters relating to public transit and intercity bus services.⁹

Section 341.031(6), F.S., defines the term "public transit" to mean

[T]he transporting of people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately

¹ See s. 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Sections 341.011 – 341.061, F.S.

⁷ Section 341.041(1), F.S.

⁸ *Id.*

⁹ Section 341.041(6), F.S.

owned. Public transit specifically includes those forms of transportation commonly known as “paratransit.”¹⁰

Public Record Exemption under Review

In 2010, the Legislature created a public record exemption for certain information held by a public transit provider.¹¹ Specifically, personal identifying information held by a public transit provider for the purpose of facilitating the prepayment of transit fares or the acquisition of a prepaid transit fare card is exempt¹² from public record requirements. A public transit provider is a public agency providing public transit service, including rail authorities created in chapter 343, F.S.¹³

Chapter 2010-196, L.O.F., provides that the personal identifying information is made exempt from public record requirements in order to put individuals choosing a prepayment option for transit fares on equal footing with public transit users paying fares in cash.¹⁴ The 2010 public necessity statement provides that “[a]llowing individuals to use a prepaid transit fare card is a more efficient and effective system for collecting transit fares, and not only saves individuals time in accessing the transit system in comparison with individuals who pay cash, but also costs significantly less to administer.”¹⁵ In addition, the public necessity statement finds that without the public record exemption the effective and efficient administration of the prepayment option for public transit programs would be hindered because individuals would be less inclined to prepay for public transit services if their personal information was made publicly available.¹⁶

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2015, unless reenacted by the Legislature.¹⁷

During the 2014 interim, subcommittee staff sent questionnaires to public transit providers as part of the Open Government Sunset Review process.¹⁸ Public transit providers were asked if their agency recommended that the Legislature repeal the public record exemption under review, reenact the public record exemption, or reenact it with changes. Of those responding, some public transit providers did not answer the question, others indicated they currently do not offer prepaid transit services and therefore have no recommendation, while the remaining respondents recommended reenacting the public record exemption.¹⁹

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for personal identifying information held by a public transit provider for the purpose of facilitating the prepayment of

¹⁰ Section 341.041(5), F.S., defines the term “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 the 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.”

¹¹ Chapter 2010-196, L.O.F.; codified as s. 341.3026, F.S.

¹² 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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹³ Section 341.031(1), F.S.

¹⁴ See s. 2, chapter 2010-196, L.O.F., providing the public necessity statement.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 341.3026(2), F.S.

¹⁸ Staff sent questionnaires to 32 public transit providers. Sixteen provided responses, while one questionnaire was returned as undeliverable. Responses are on file with the Government Operations Subcommittee.

¹⁹ *Id.* at question 7.

transit fares or the acquisition of a prepaid transit fare card. The bill transfers s. 341.3026, F.S., and renumbers it as s. 341.0521, F.S., in order to include the public record exemption in the Florida Public Transit Act.²⁰ By relocating the public record exemption to the Florida Public Transit Act, the cross-reference to the definition of “public transit provider” is no longer necessary because the definition in the act will now apply to the public record exemption.²¹

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.

²⁰ Sections 341.011 – 341.061, F.S.

²¹ Section 341.031, F.S., provides definitions for the Florida Public Transit Act, which definitions are limited to ss. 341.011 – 341.061, F.S.