

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7007      PCB OTM 19-03      OGSR/Toll Facilities  
**SPONSOR(S):** Oversight, Transparency & Public Management Subcommittee, Andrade, Robert  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Toliver	Harrington
1) Transportation & Infrastructure Subcommittee	15 Y, 0 N	Johnson	Vickers
2) State Affairs Committee			

### 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 Department of Transportation (DOT) is authorized to adopt rules relating to the payment, collection, and enforcement of tolls. DOT has implemented, by rule, two electronic toll collection systems known as SunPass and Toll-By-Plate. In 1996, the Legislature created a public record exemption protecting the personal identifying information of SunPass users and, in 2014, expanded the exemption to include the personal identifying information of Toll-By-Plate users.

The public record exemption protects personal identifying information held by DOT, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities.

The bill reenacts the public record exemption, which will repeal on October 2, 2019, 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 (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.<sup>2</sup>

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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.<sup>3</sup>

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>4</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 then a public necessity statement and a two-thirds vote for passage are not required.

##### Electronic Toll Payment

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.<sup>5</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>6</sup> DOT has implemented, by rule, two electronic toll collection systems known as SunPass and Toll-By-Plate.<sup>7</sup>

SunPass<sup>8</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

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

<sup>2</sup> Section 119.15(3), F.S.

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

<sup>4</sup> Section 24(c), Art. I, FLA. CONST.

<sup>5</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>6</sup> Section 338.155(1)(c), F.S.

<sup>7</sup> Rules 14-15.0081, 14-100.003, and 14-100.005, F.A.C.

<sup>8</sup> Rule 14-15.0081, F.A.C.

prepaid account. SunPass account information includes the license plate number, address, and credit card information.<sup>9</sup>

Toll-By-Plate,<sup>10</sup> established by DOT in 2010, uses an image-based method of toll collection. The Miami-Dade Expressway Authority<sup>11</sup> and the Tampa-Hillsborough Expressway Authority<sup>12</sup> 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. Accounts may require name, address, email, driver's license number, day time phone number, and credit and debit card numbers.

#### Public Record Exemption under Review

In 1996, the Legislature created a public record exemption protecting the personal identifying information of SunPass users. In 2014, the Legislature expanded the exemption for payment of tolls to include the personal identifying information of Toll-By-Plate customers.<sup>13</sup> The exemption protects the personal identifying information held by DOT, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities.<sup>14</sup> The information is exempt<sup>15</sup> from public record requirements.<sup>16</sup>

The 2014 public necessity statement<sup>17</sup> for the exemption provides that:

The exemption puts individuals who pay for tolls by TOLL-BY-PLATE, which is video billed, on equal footing with individuals who pay for tolls by check, debit card, or credit card, or who pay cash at the toll booth. The exemption protects the health and safety of the public by making exempt information regarding the locations, travel patterns, and travel activity of individuals as they use the toll road system. The exemption protects the anonymity of all travelers on toll roads, not just cash customers, regardless of the method of payment of tolls. The exemption also thereby promotes the use of the electronic toll collection system, which is a more efficient and effective government collection system for tolls, because paying for tolls by TOLL-BY-PLATE, which is video billed, or paying for tolls by check, debit card, or credit card not only saves individuals time when passing through the toll facilities, compared to individuals who pay for tolls with cash, but also costs much less to administer.<sup>18</sup>

Pursuant to the Open Government Sunset Review Act,<sup>19</sup> the exemption will repeal on October 2, 2019, unless reenacted by the Legislature.<sup>20</sup>

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<sup>9</sup> Information on SunPass is available at: <https://www.sunpass.com/en/home/index.shtml> cfm (last visited Jan. 15, 2019).

<sup>10</sup> Rule 14-100.005, F.A.C.

<sup>11</sup> Miami-Dade Expressway Authority, FAQs, available at <https://www.mdxway.com/toll-inquiries/faqs> (last visited Jan. 16, 2019).

<sup>12</sup> Tampa Hillsborough Expressway Authority, Toll-By-Plate, available at <https://www.tampa-xway.com/payments/> (last visited Jan. 16, 2019).

<sup>13</sup> Chapter 2014-217, L.O.F.; codified as s. 338.155(6), F.S.

<sup>14</sup> Section 338.155(6), F.S.

<sup>15</sup> There is a difference between records the Legislature designates 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).

<sup>16</sup> *Id.*

<sup>17</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

<sup>18</sup> Chapter 2014-217, L.O.F.

<sup>19</sup> Section 119.15, F.S.

<sup>20</sup> Section 338.155(6), F.S.

### Open Government Sunset Review

During the 2018 interim, subcommittee staff sent questionnaires to all categories of affected entities: DOT, counties, municipalities, and expressway authorities.<sup>21</sup> Of the respondents who utilize the exemption, all recommended that the exemption be reenacted without changes.<sup>22</sup> Some respondents noted that the exemption is necessary to protect the safety of toll customers and to promote the use of the electronic toll collection system.<sup>23</sup> DOT believes the exemption necessary and has recommended reenactment without changes.<sup>24</sup>

### **Effect of the Bill**

The bill removes the scheduled repeal date of the public record exemption, thereby reenacting the public record exemption for personal identifying information held by DOT, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities.

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

Section 1 amends s. 338.155, F.S., to save from repeal the public record exemption for personal identifying information held for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities.

Section 2 provides an effective date of October 1, 2019.

## **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.

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<sup>21</sup> Questionnaire responses on file with the House Oversight, Transparency & Public Management Subcommittee.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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.