



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

### B. EFFECT OF PROPOSED CHANGES:

#### **BACKGROUND**

##### Open Government Sunset Review Act

The Open Government Sunset Review 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.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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; or,
- Protecting trade or business secrets.

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>2</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,<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Paratransit Services

The Americans with Disabilities Act of 1990 (ADA) requires public entities operating non-commuter fixed route transportation services to provide paratransit<sup>4</sup> and other special transportation services to individuals who are unable to use the fixed route system.<sup>5</sup> The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements on state and local entities to administer a process for determining

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

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Federal law defines "paratransit" to mean "comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems." (49 C.F.R. part 37.3) Section 427.011(9), F.S., defines "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 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."

<sup>5</sup> 49 CFR 37, Subpart F.

eligibility.

Eligible recipients for such services include:

- Individuals unable to get on or off public transit without assistance.
- Individuals who use a wheelchair lift on public transportation but such transportation is not available when needed.
- Disabled individuals with a specific impairment that prevents travel to a point of departure or travel from a disembarking location.<sup>6</sup>

Federal law also requires that each state plan to provide Medicaid services indicate that the Medicaid agency<sup>7</sup> “will ensure necessary transportation to and from providers for recipients; and describe the methods that the agency will use to meet this requirement.”<sup>8</sup> Florida law requires the Agency for Health Care Administration (AHCA) to purchase Medicaid transportation services through the community transportation coordinator (CTC) for the Transportation Disadvantaged program unless a more cost-effective method exists or if the CTC does not coordinate such services.<sup>9</sup>

These services are Medicaid Non-Emergency Transportation Services. The Commission for the Transportation Disadvantaged (CTD) manages such services. The CTD contracts with a CTC and a planning agency in each county to provide transportation services.

The local coordinating board develops applicant-qualifying criteria. The CTC uses the qualifying criteria to determine eligibility for services. Applicants must submit an application that requires the disclosure of medical and disability information, among other information.

### Public Record Exemption

Current law provides a public record exemption for all personal identifying information contained in records relating to a person’s health for determining eligibility for paratransit services under Title II of the ADA or the transportation disadvantaged program.<sup>10</sup> This exemption applies to such information contained in records held by local governmental entities.

The confidential and exempt information must be disclosed:

- With the express written consent of the individual or the individual’s legally authorized representative;
- In a medical emergency, but only to the extent necessary to protect the health or life of the individual;
- By court order upon a showing of good cause; or
- For the purpose of determining eligibility for paratransit services if the individual or the individual’s legally authorized representative has filed an appeal or petition before an administrative body of a local government or a court.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2008, unless reenacted by the Legislature.<sup>11</sup>

### 2007 Interim Study

In 2007, the Division of Statutory Revision of the Office of Legislative Services certified for repeal the public record exemption for paratransit services. As such, Committee staff reviewed the exemption

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<sup>6</sup> 49 C.F.R. part 37.123.

<sup>7</sup> In Florida, the Medicaid agency is the Agency for Health Care Administration.

<sup>8</sup> 42 C.F.R. part 431.53.

<sup>9</sup> Section 427.0135, F.S.

<sup>10</sup> Section 119.0713(2), F.S.

<sup>11</sup> Section 2., chapter 2003-110, L.O.F.

during the interim and it was determined that the exemption:

- Allows local governments to effectively and efficiently administer the program for the transportation disadvantaged, which administration would be significantly impaired without the exemption; and
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals.

The review also revealed that the information is not provided to local governmental entities only. For example, the CTD also has access to the eligibility information.<sup>12</sup>

## **EFFECT OF BILL**

The bill reenacts and expands the public record exemption by making it applicable to any agency that is the custodian of such information in lieu of local governmental entities only. As such, the repeal date is extended to October 2, 2013, and a public necessity statement is included.

The bill relocates the exemption to s. 119.071, F.S., which provides the general public record exemptions from inspection and copying. It provides a definition for paratransit.<sup>13</sup> Finally, the bill reorganizes the exemption, removes superfluous language, and conforms cross-references.

### **C. SECTION DIRECTORY:**

Section 1 amends s. 119.011, F.S., to provide a definition of “paratransit.”

Section 2 transfers and redesignates s. 119.0713(2), F.S., to s. 119.071(5), F.S., and amends the section to reenact and expand the public record exemption for paratransit services.

Section 3 provides a public necessity statement.

Section 4 repeals s. 2 of chapter 2003-110, L.O.F., which provides for repeal of the exemption.

Section 5 amends s. 257.34, F.S., to conform a cross-reference.

Section 6 amends s. 257.35, F.S., to conform a cross-reference.

Section 7 provides an effective date of October 1, 2008.

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

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

See “FISCAL COMMENTS.”

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<sup>12</sup> See the Committee on State Affairs interim project report entitled “Open Government Sunset Reviews,” January 2008, at pages 10 – 12 (on file with the Committee on State Affairs).

<sup>13</sup> The bill provides that “paratransit” has the same meaning as provided in s. 427.011, F.S., which means “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 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.”

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 likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public records requests could require training related to the expansion of the current public record exemption. In addition, agencies could incur costs associated with redacting the confidential and 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.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.