

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 393 Pub. Rec./Public Transit Provider
SPONSOR(S): Governmental Affairs Policy Committee, Bovo, and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 688

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Governmental Affairs Policy Committee, 14 Y, 0 N, As CS, Williamson, Williamson. Rows 2-5 are empty.

SUMMARY ANALYSIS

Current law provides a public record exemption for personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of prepayment of electronic toll facilities charges. This exemption does not apply to information provided by bus or rail passengers. Therefore, while there is an exemption for a program such as SunPass, currently there is no such exemption for a transit payment mechanism like Miami-Dade's EASY Card.

The bill creates a public record exemption for personal identifying information held by a public transit provider for the purpose of prepaying transit fares or acquiring a prepaid transit fare card or similar device. It provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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 public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records Law

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 a 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.

##### Disclosure of Personal Information for Transportation Purposes

Current law provides a public record exemption for personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of prepayment of electronic toll facilities charges.<sup>3</sup> This exemption has been interpreted to include personal identifying information "on an application and agreement for a transponder that enables travelers to prepay toll collections and avoid stopping for tolls when such service is paid for by credit card, charge card, or

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

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 338.155(6), F.S.

check.”<sup>4</sup> This exemption does not apply to information provided by bus or rail passengers. Therefore, while there is an exemption for a program such as SunPass,<sup>5</sup> currently there is no such exemption for a transit payment mechanism like Miami-Dade’s EASY Card.<sup>6</sup>

### **Effect of Bill**

The bill creates a public record exemption for personal identifying information held by a public transit provider<sup>7</sup> for the purpose of prepaying transit fares or acquiring a prepaid transit fare card or similar device. Such information is made exempt<sup>8</sup> from public records requirements.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>9</sup>

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

Section 1 creates s. 341.3026, F.S., to create a public record exemption for certain information held by a public transit provider for the purpose of prepaying transit fares.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2010.

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

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

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

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<sup>4</sup> Florida Attorney General Opinion 99-61 (1999).

<sup>5</sup> See <http://www.sunpass.com/>.

<sup>6</sup> See <http://easycard.miamidade.gov/>.

<sup>7</sup> Section 341.031(1), F.S., defines “public transit provider” to mean a public agency providing public transit service, including rail authorities created in chapter 343, F.S.

<sup>8</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 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 the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

<sup>9</sup> Section 24(c), Art. I of the State Constitution.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on public transit providers, because staff responsible for complying with public records requests could require training related to creation of the public record exemption. In addition, those providers 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 public transit provider.

### 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 State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2010, the Governmental Affairs Policy Committee reported HB 393 favorably as a committee substitute. The bill created a public record exemption for personal identifying information held by a public transit provider for the purpose of prepaying transit fares or acquiring a prepaid transit fare card. It also created a public record exemption for information indicating the location, whereabouts, or travel patterns of such person. The committee substitute narrows the exemption by removing from the bill the public record exemption for information indicating the location, whereabouts, or travel patterns of a person using a prepaid transit fare card.