

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.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 688

INTRODUCER: Senator Gelber

SUBJECT: Public Records/Public Transit Provider

DATE: December 30, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Favorable
2.			GO	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill makes confidential and exempt from the Public Records Law¹ and s. 24(a), Art. I of the State Constitution:

- personal identifying information a public transit provider² obtains for prepaying transit fares or acquiring a prepaid transit fare card and
- information that indicates the location or travel patterns of a person using a prepaid transit fare card.

This bill subjects the exemption to future repeal and review under the Open Government Sunset Review Act.³ The bill provides a statement from the Legislature that acknowledges that prepaying transit fares is an efficient and effective system for collecting transit fares but emphasizes that the privacy of persons using devices such as transit fare cards should be protected.

This bill substantially amends section 119.071 of the Florida Statutes. This bill creates one undesignated section of law.

II. Present Situation:

¹ Section 119.07(1), F.S.

² Section 341.031, F.S.

³ Section 119.15, F.S.

Constitutional Access to Public Records

Article I, s. 24 of the State Constitution, provides every person with the right to 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 persons acting on their behalf. The section specifically includes the legislative, executive and judicial branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissions or entities created pursuant to law or the State Constitution.

The term “public records” has been defined by the Legislature in s. 119.011(12), F.S., to include:

. . . 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.

This definition of public records has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.⁴ Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.⁵

Only the Legislature is authorized to create exemptions to open government requirements.⁶ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁷ A bill enacting an exemption⁸ may not contain other substantive provisions, although it may contain multiple exemptions relating to one subject.⁹

Exemptions to public records requirements are strictly construed because the general purpose of open records requirements is to allow Florida’s citizens to discover the actions of their government.¹⁰ The Public Records Act is liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so that they are limited to their stated purpose.¹¹

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be

⁴ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁵ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁶ Article I, s. 24(c) of the State Constitution.

⁷ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁸ s. 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁹ Article I, s. 24(c) of the State Constitution

¹⁰ *Christy v. Palm Beach County Sheriff’s Office*, 698 So.2d 1365, 1366 (Fla. 4th DCA 1997).

¹¹ *Krischer v. D’Amato*, 674 So.2d 909, 911 (Fla. 4th DCA 1996); *Seminole County v. Wood*, 512 So.2d 1000, 1002 (Fla. 5th DCA 1987), review denied, 520 So.2d 586 (Fla. 1988); *Tribune Company v. Public Records*, 493 So.2d 480, 483 (Fla. 2d DCA 1986), review denied sub nom., *Gillum v. Tribune Company*, 503 So.2d 327 (Fla. 1987).

maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.¹² If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹³

An exemption from disclosure requirements for confidential information does not render a record automatically privileged for discovery purposes under the Florida Rules of Civil Procedure.¹⁴ For example, the Fourth District Court of Appeal has found that an exemption for active criminal investigative information did not override discovery authorized by the Rules of Juvenile Procedure and permitted a mother who was a party to a dependency proceeding involving her daughter to inspect the criminal investigative records relating to the death of her infant.¹⁵ The Second District Court of Appeal also has held that records that are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records.¹⁶

Open Government Sunset Review Act

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Disclosure of Personal Information for Transportation Purposes

Section 338.155(6), F.S., exempts personal identifying information the Department of Transportation, a county, or an expressway authority obtains for the payment of tolls from the Public Records Law¹⁷ and s. 24(a), Art. I of the State Constitution. This statute 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 check.”¹⁸ This exemption does not apply to information provided by bus or rail passengers. Therefore, while there is an exemption for a program such as SunPass¹⁹ there is no exemption for a transit payment mechanism such as Miami-Dade’s EASY Card.²⁰

¹² Fla. Att’y Gen. Op 85-62 (1985).

¹³ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla. 1991).

¹⁴ *Department of Professional Regulation v. Spiva*, 478 So.2d 382 (Fla. 1st DCA 1985).

¹⁵ *B.B. v. Department of Children and Family Services*, 731 So.2d 30 (Fla. 4th DCA 1999).

¹⁶ *Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.*, 570 So.2d 1322 (Fla. 2^d DCA 1990).

¹⁷ Section 119.07(1), F.S.

¹⁸ Fla. Att’y Gen. Op. 99-61 (1999).

¹⁹ See <http://www.sunpass.com/>.

²⁰ See <http://easycard.miamidade.gov/>.

III. Effect of Proposed Changes:

Section 1 amends subsection (5) of s. 119.071, F.S., to make confidential and exempt from the Public Records Law²¹ and s. 24(a), Art. I of the State Constitution:

- personal identifying information a public transit provider²² obtains for prepaying transit fares or acquiring a prepaid transit fare card and
- information that indicates the location or travel patterns of a person using a prepaid transit fare card.

This would protect the personal identifying information of people who disclose their personal information to prepay fares on bus and rail systems as well as information regarding where those people travel. For example, it would protect information about the location, whereabouts, or travel patterns of a person using Miami-Dade's EASY Card while using the bus and rail systems supported by that card. This exemption is not intended to cover aggregate statistical data on travel patterns, only information from specific persons.

This bill subjects the exemption to future repeal and review under the Open Government Sunset Review Act.²³ Therefore, this exemption shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a statement of legislative intent stating that this information is a public necessity, in part because transit fare cards:

- are an efficient and effective system for collecting transit fares;
- save individuals time in accessing the transit system in comparison with individuals who pay cash; and
- are cost effective to administer.

It is, therefore, a public necessity to protect the privacy of fare card users and promote the right of individuals to be let alone from unreasonable governmental intrusion.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill creates a new public records exemption and is, therefore, subject to a two-thirds vote of each house of the Legislature as required by Article I, Section 24 of the State Constitution.

²¹ Section 119.07(1), F.S.

²² Section 341.031, F.S. (defining a public transit provider as "a public agency providing public transit service, including rail authorities created in chapter 343.").

²³ Section 119.15, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.