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**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HB 687
RELATING TO: Public Records / Disabled / Personal Information
SPONSOR(S): Council for Smarter Government, Committee on State Administration and Representative(s) Brummer
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 10 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Twenty-three county governments provide ADA (Americans with Disability Act) Paratransit Services. In order to assure proper eligibility for paratransit services, an applicant must complete an application, which requires disclosure of medical and disability information, an applicant's social security number, and additional identifying information. Currently, there is no public records exemption for that information.

This council substitute creates a public records exemption for all personal identifying information contained in records relating to a person's health held by local governmental entities or their service providers for the purpose of determining eligibility for paratransit services under Title II of the Americans with Disabilities Act or eligibility for the transportation disadvantaged program. This council substitute allows release of such information 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 purposes 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.

This council substitute provides a public necessity statement, as required by the Florida Constitution, which states that an individual's expectation and right to privacy in all matters relating to his or her personal health and eligibility for paratransit services necessitates this exemption and that such information is of a sensitive, personal nature.

This council substitute provides for retroactive application of the public records exemption. Additionally, the council substitute provides for future review and repeal of the public records exemption.

This council substitute does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Law

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records 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, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. 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.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

ADA (Americans with Disabilities Act) Paratransit Services

The Americans with Disabilities Act of 1990 (ADA) requires that public entities, which operate non-commuter fixed route transportation services, also provide complementary paratransit¹ service for individuals unable to use the fixed route system.² The U.S. Department of Transportation issued regulations that specify to whom and under what circumstances this service is to be provided. In addition, the regulations require public entities that are subject to the complimentary paratransit requirements to develop and administer a process for determining if individuals who request service meet the regulatory criteria for eligibility.³

Eligibility for complementary paratransit service is directly related to the inability of a person with a disability to use the existing fixed route service. The regulations describe three specific circumstances under which a person would be considered ADA paratransit eligible. The three categories of eligibility are:

- Any individual with a disability who is unable, as the result of a physical or mental impairment (including a vision impairment), and without the assistance of another individual (except the operator of a wheelchair lift or other boarding assistance

¹ Section 427.011(9), F.S., defines "paratransit" as "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." Taxis, limousines, buses, and other demand-responsive operations provide paratransit service.

² ADA Paratransit Eligibility Manual – Final Report, September 1993.

³ *Id.*

device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities.

- Any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device and is able, with such assistance, to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route of the system during the hours of operation of the system at a time, or within a reasonable period of such time, when such a vehicle is not being used to provide designated public transportation on the route.
- Any individual with a disability who has a specific impairment-related condition that prevents such individual from traveling to a boarding location or from a disembarking location on such system.⁴

In Florida, 23 county governments provide ADA Paratransit Services.⁵ In order to assure proper eligibility, an applicant must complete an application, which requires disclosure of medical and disability information, the applicant's social security number, and additional identifying information.⁶ Currently, there is no public records exemption for this information.

C. EFFECT OF PROPOSED CHANGES:

This council substitute amends s. 119.07(3), F.S., to create a public records exemption for all personal identifying information contained in records relating to a person's health held by local governmental entities or their service providers for the purpose of determining eligibility for paratransit services under Title II of the Americans with Disabilities Act or eligibility for the transportation disadvantaged program provided in part I of chapter 427.

This council substitute provides for exceptions to the exemption. The information can be released 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 purposes 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.

This council substitute provides a public necessity statement, as required by Art. I, s. 24 of the Florida Constitution, which states that an individual's expectation and right to privacy in all matters relating to his or her personal health and eligibility for paratransit services necessitates this exemption and that such information is of a sensitive, personal nature.

This council substitute provides for retroactive application of the public records exemption. Additionally, this exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

⁴ ADA Paratransit Eligibility Manual – Final Report, September 1993, chapter 1.

⁵ Telephone conversation with Julie Shaw of the ADA Working Group, November 29, 2001.

⁶ Handout from the Department of Management Services, Americans with Disability Act / Paratransit Services Public Records Exemption, March 2001.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. 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.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This council substitute does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This council substitute does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This council substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

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