

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1785 (PCB SA 03-22) Public Records Exemption/Paratransit Services  
**SPONSOR(S):** State Administration and Mack  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1664

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration	5 Y, 0 N	Williamson	Everhart
2)			
3)			
4)			
5)			

---

**SUMMARY ANALYSIS**

In order to assure proper eligibility for paratransit services or the transportation disadvantaged program, an applicant must complete an application, which requires disclosure of medical and disability information. Currently, there is no public records exemption for this information.

This bill 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 purposes of determining eligibility for paratransit services or eligibility for the transportation disadvantaged program. This bill provides for exceptions to the exemption, retroactive application, and future review and repeal. It also provides a public necessity statement as required by the Florida Constitution.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1785.sa.doc  
**DATE:** April 1, 2003

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain: Not applicable.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

The Americans with Disabilities Act of 1990 (ADA) requires that public entities operating non-commuter fixed route transportation services also provide complementary paratransit<sup>1</sup> service for individuals unable to use the fixed route system. 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.

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 when a disabled person:

- Cannot get on or off a public bus or train without someone else’s help.
- Needs the use of a wheelchair lift that is on a public bus, but the bus does not run when the person needs to use it.
- Cannot get to or from the bus stop or train station.

In order to assure proper eligibility, an applicant must complete an application, which requires disclosure of medical and disability information. Currently, there is no public records exemption for this information.

#### Effect of Bill

This bill 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 purposes of determining eligibility for paratransit services under Title II of the ADA or eligibility for the transportation disadvantaged program provided in part I of chapter 427, F.S. Such information is made confidential and exempt.<sup>2</sup>

---

<sup>1</sup> 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.

<sup>2</sup> There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from

This bill provides exceptions to the exemption. Such 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 bill provides for retroactive application<sup>3</sup> and future review and repeal, and provides a public necessity statement as required by the Florida Constitution.

C. SECTION DIRECTORY:

Section 1. Amends s. 119.07(3), F.S., creating a public records exemption for personal identifying information contained in records relating to a person's health held by local governmental entities for purposes of determining eligibility for paratransit services.

Section 2. Provides for future review and repeal.

Section 3. Provides a statement of public necessity.

Section 4. Provides an effective date of upon becoming a law.

## 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.

---

public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

<sup>3</sup> On April 26, 2001, the Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.

2. Other: None.

#### B. RULE-MAKING AUTHORITY: None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **Public Records Law**

Article I, s. 24(a), Florida 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 may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida 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.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995<sup>4</sup> provides that a public records or public meetings 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 public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. 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, 3. Protecting trade or business secrets.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

---

<sup>4</sup> Section 119.15, F.S.