

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 Committee on Governmental Oversight and Accountability

BILL: CS/SB 616

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Evers

SUBJECT: Public Records/Toll Facilities

DATE: March 6, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Favorable
2.	Kim	McVaney	GO	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 616 expands an existing public records exemption to apply to personal identifying information held by a municipality, in addition to that held by the Department of Transportation, a county, or an expressway authority, for purposes relating to payment for the use of toll facilities. The bill also removes references to specific payment types; *i.e.*, credit card, charge card, or check, and instead provides that the exemption applies to personal identifying information of individuals that is held for the purpose of paying, prepaying, or collecting tolls and associated charges.

The bill provides that the expanded exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution. This bill expands a public records exemption and requires a two-thirds vote for passage.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included in this constitutional provision.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁴ Section 119.011(12), F.S., defines "public records" to mean "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." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.07(1)(a), F.S.

⁵ See *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

Electronic Toll Payment

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.¹³ The Department of Transportation (DOT) is authorized to adopt rules relating to the payment, collection, and enforcement of tolls, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.¹⁴ The DOT has implemented two programs (SunPass and Toll-By-Plate) for electronic toll collections.

SunPass¹⁵ is an electronic system of toll collection accepted on all Florida toll roads and nearly all toll bridges. SunPass utilizes a prepaid account system and electronic devices called transponders that attach to the inside of a car's windshield. When a car equipped with SunPass goes through a tolling location, the transponder sends a signal and the toll is deducted from the customer's prepaid account. SunPass customers typically fund prepaid accounts using credit cards, debit cards, and checks. SunPass account information includes the license plate number, address, and credit card information.¹⁶

The Toll-By-Plate¹⁷ program, established by the DOT in 2010, is an image-based system of toll collection. Toll-By-Plate takes a photo of a license plate as a vehicle travels through a Turnpike tolling location and mails a monthly bill for the tolls, including an administrative charge, to the registered owner of the vehicle. Accounts can be set up as pre-paid or post-paid.¹⁸ Accounts may require name, address, email, driver's license number, day time phone number, and credit and debit card numbers.¹⁹

Town of Bay Harbor Islands

Bay Harbor Islands operates and maintains a tolled drawbridge on the Broad Causeway in Miami-Dade County. Customers may pay the toll in cash at the tollbooth or, similar to SunPass, customers may set up prepaid "Baypass" accounts.²⁰ Conversion of the system to all-electronic toll payment is currently underway. The DOT and Bay Harbor Islands anticipate entering into an

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ See s. 338.155(1), F.S. The exemptions generally include toll employees on official state business, state military personnel on official military business, persons authorizing resolution for bonds to finance the facility, persons using the toll facility as a required detour route, law enforcement officers or persons operating a fire or rescue vehicle when on official business, funeral processions of law enforcement officers killed in the line of duty, and handicapped persons.

¹⁴ Section 338.155(1), F.S.

¹⁵ Rule 14-15.0081, F.A.C.

¹⁶ Information on SunPass is available at: <http://www.floridasturnpike.com/all-electronic tolling/SunPass.cfm> (last visited January 23, 2014).

¹⁷ Rule 14-100.005, F.A.C.

¹⁸ Information on toll-by-plate is available at: <http://www.floridasturnpike.com/all-electronic tolling/TOLL-BY-PLATE.cfm> (last visited January 23, 2014).

¹⁹ Information on toll-by-plate accounts can be found at:

<https://www.tollbyplate.com/displaySelectCustomerTypeRegisterAccountNewAccount> (last visited January 23, 2014).

²⁰ Information on Baypass accounts is available at: <https://www.bayharborislands.org:453/baypass.aspx> (last visited January 23, 2014).

agreement under which the DOT will perform “back-office” toll collection for the municipality.²¹ Customers will have the option to pre-pay tolls through pre-paid accounts or through the post-payment Toll-By-Plate program. Bay Harbor Islands will continue to operate and maintain the drawbridge and, in addition to currently held personal identifying information, will hold the personal identifying information of Toll-By-Plate customers.

Public Records Exemption: Electronic Payment of Tolls

Section 338.155(6), F.S., provides that personal identifying information provided to, acquired by, or in the possession of the DOT, a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities charges is exempt from public disclosure. This provision was first adopted in 1996.²² The exemption does not currently apply to personal identifying information held by a municipality, nor does it protect personal identifying information related to post-payment for the use of toll facilities by Toll-By-Plate customers.

III. Effect of Proposed Changes:

The bill amends s. 338.155(6), F.S., to expand the existing public records exemption for personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities charges.

Specifically, this bill expands the exemption to include personal identifying information held by a municipality. It also removes references to specific payment types and instead provides that the exemption applies to personal identifying information of individuals that is held for the purpose of *paying, prepaying, or collecting tolls and associated charges*. This includes personal identifying information of Toll-By-Plate customers. Finally, this bill protects personal identifying information that has been or is currently held by the Department of Transportation, a county, an expressway or a municipality.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill’s effective date is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

²¹ Such agreements are authorized pursuant to s. 338.161, F.S.

²² Chapter 96-178, L.O.F.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created or expanded public records or public meetings exemption. Because this bill expands a public records exemption it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill expands a new public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

State and local agencies may incur additional costs associated with implementation of this bill. Specifically, the agencies may incur costs to train their staff on the new law and to redact the newly exempted information prior to releasing a record. Most likely the costs would be absorbed as part of the day-to-day responsibilities of the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 338.155 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 6, 2014:

The CS provides for retroactive application of the exemption.

- B. **Amendments:**

None.