

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB THSS 12-02 Public Records
SPONSOR(S): Transportation & Highway Safety Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Highway Safety Subcommittee	15 Y, 0 N	Johnson	Kruse

SUMMARY ANALYSIS

Current law provides a public records exemption for the personal identifying information of users of toll facilities who pay their tolls by using a transponder and the associated prepaid account established with the Department of Transportation (DOT) or applicable expressway authority.

The bill expands the current public records exemption to include personal identifying information of customers who use TOLL-BY-PLATE (video billed) in order to pay tolls.

The bill provides for repeal of the exemptions on October 2, 2017, 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 or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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.¹

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 Act² 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.

Toll Exemption

Section 338.155(6), F.S., provides a public records exemption for the personal identifying information of users of toll facilities who pay their tolls by using a transponder and the associated prepaid account established with the Department of Transportation (DOT) or applicable expressway authority. This provision was first adopted in 1996.³

DOT has begun using and is expanding the use of TOLL-BY-PLATE (video billing), which takes a picture of the license plate as it passes through the toll booth and then sends an invoice to the registered owner of the vehicle.⁴ Personal identifying information related to TOLL-BY-PLATE customers is not included in the current public records exemption.

Proposed Changes

The bill amends s. 338.155(6), F.S., to provide that personal identifying information held by DOT, a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and other amounts due for the use of toll facilities to DOT, a county, or expressway authority is exempt from public records laws.

The bill provides that s. 338.155(6), F.S. is subject to the Open Government Sunset Review Act⁵ and is repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

¹ Section 24(c), Art. I of the State Constitution.

² Section 119.15, F.S.

³ Chapter 96-178, L.O.F.

⁴ Information on toll-by-plate is available at <http://www.floridasturnpike.com/all-electronictolling/TOLL-BY-PLATE.cfm> (Last visited January 17, 2012).

⁵ Section 119.15, F.S.

The bill provides legislative findings that it is a public necessity as required by the State Constitution⁶ to exempt personal identifying information about individuals which is held by DOT, county, or an expressway authority for the purpose of paying for use of toll facilities by any means of payment. The exemption puts individuals who pay with TOLL-BY-PLATE (video billed) on equal footing with individuals who pay by a check, charge card, or credit card, or who pay by cash at the toll booth. The exemption protects the health and safety of the public by keeping confidential information as to the whereabouts of individuals who use the toll road system. The exemption promotes the use of the electronic toll collection system, which is a more efficient and effective government collection system for tolls, because paying by TOLL-BY-PLATE (video billed) or paying for tolls by check, charge card, or credit card not only saves individuals time in passing through the toll facilities, in comparison to those who pay cash, but also costs much less to administer. Further, the exemption protects the privacy of individuals and promotes the right to be let alone from unreasonable government intrusion by prohibiting the public disclosure of private information about the finances and location of the individual using the toll road system.

The bill has an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1 Amends s. 338.155, F.S., related to the payment of tolls on toll facilities.

Section 2 Provides a finding of public necessity.

Section 3 Provides an effective date.

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.

III. COMMENTS

⁶ Section 24(c), Art. I of the State Constitution.

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure 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.

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 new 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 new public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.