

**BILL:** SB 1268 (Simitian, D-Palo Alto)  
Introduced February 19, 2010  
Amended April 5, 2010

**SUBJECT:** SB 1268 would set document retention timelines for toll road accounts and prohibit the disclosure of information related to toll road customers, with limited exceptions

**STATUS:** Passed Senate Transportation and Housing Committee on April 6, 2010 (8-0)  
Passed Senate Judiciary Committee on April 13, 2010 (3-1)  
Pending in the Senate Appropriations Committee

**SUMMARY AS OF APRIL 14, 2010:**

SB 1268 would prohibit a transportation agency from selling or providing personally identifiable information obtained as a result of a customer's use of a toll facility, with the exception of providing the information to a law enforcement agency pursuant to a search warrant or emergency as defined by a peace officer.

With respect to document retention timelines, SB 1268 states that personally identifiable information may only be retained to perform such functions as billing, account settlement, or enforcement activities. Otherwise, this information is to be purged six months after the closure date of the billing cycle or 60 days after the bill has been paid, whichever occurs last. The bill also requires that personally identifiable information to be purged within 60 days after the account is closed or terminated and in no case could the data be retained for more than 150 days.

There are also unclear provisions about the sharing of data with another transportation agency "solely to comply with interoperability specifications and standards." It is not clear whether this intends to allow for the kind of cooperative account communications currently occurring with other toll facility operators to allow for the use of a common transponder on several facilities nor is it clear if this would allow transportation agencies to share data in the event there are jointly operated facilities.

SB 1268 also requires that the agency establish a privacy policy and make that information conspicuous and meaningful to the customer. The bill does not prohibit the use of aggregated data with personal information removed for agency or other use and permits communications between the transportation agency and its customers about its specific transportation related products and services. SB 1268 also outlines damages for violations of this law.

Supporters include the American Civil Liberties Union, Electronic Frontier Foundation, and Privacy Rights Clearinghouse. Several toll operators have expressed concern about the bill and its impact on operations but so far only the Transportation Corridor

Agencies (TCA) has an oppose unless amended position to address the *Avery et al. v. Orange County Transportation Authority, et al.*(Avery) settlement, which challenged current notification procedures, the appeals process, and associated toll penalties.

### **EFFECTS ON ORANGE COUNTY:**

The Orange County Transportation Authority (OCTA) currently owns the 91 Express Lanes, a four-lane, ten-mile toll facility in the center median of the Riverside Freeway (State Route 91). While the bill contains many provisions that toll agencies across the state may wish to support, such as a prohibition against the sale or provision of personally identifiable information to commercial interests and greater protections related to providing information to law enforcement entities, there are a number of other parts of the bill that create significant operational concerns.

Most notably of concern is an unclear relationship with the *Avery* settlement, referenced above. The settlement, in Section VI.H., requires that, “OCTA and TCA will use their best efforts to consistently maintain a complete and accurate paper and/or electronic trail of communications with commuters (violators or not) relating to violations...OCTA and TCA may adopt and implement document retention schedules that allow for the destruction of documents relating to toll violations, provided that such documents are kept for a minimum of five years from the date of generation.” While the bill appears to provide exceptions for the maintenance of violation data, it is not clear whether the bill will allow us to fully comply with the terms of the settlement. The author has indicated that he may work with us to address the issue, but no agreement has yet been reached on how to do that.

Additionally, the bill contains other significant operational concerns related to potential customer challenges to toll charges (not violations) after the 60 day window, costs of compliance to destroy the referenced data and to maintain only records that fall within the appropriate window, and the ability of OCTA and the Riverside County Transportation Commission (RCTC) to continue discussions related to joint or contracted operations for the extension of the 91 Express Lanes.

Staff recommends that the Board of Directors oppose the bill unless the *Avery* settlement and the following significant operations issues are addressed: records retention requirements meet appropriate customer service standards and statute of limitation restrictions; costs of compliance are minimized and reimbursable by the state; and that the bill not interfere with plans to extend the 91 Express Lanes or limit how RCTC and OCTA may wish to jointly operate or contract for the operations of the two segments, and provide for appropriate customer communications on the two facilities.

### **OCTA POSITION:**

Staff recommends: OPPOSE UNLESS AMENDED

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1268**

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**Introduced by Senator Simitian**

February 19, 2010

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An act to add Chapter 8 (commencing with Section 31490) to Division 17 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1268, as amended, Simitian. Toll bridges, *lanes*, and highways: electronic toll collection mechanisms: disclosure of personal information.

Existing law authorizes development and implementation of various electronic bridge and highway toll collection mechanisms.

This bill would prohibit a transportation agency, as defined, from selling or providing personally identifiable information of a ~~subscriber~~ *person* obtained pursuant to the ~~subscriber's person's~~ participation in an electronic toll collection system *or use of a toll facility*, subject to specified exceptions. The bill would allow a transportation agency to store certain personally identifiable information of a ~~subscriber~~ *person* and would require it to discard other information within a designated time period. The bill would authorize a ~~subscriber~~ *person* whose personally identifiable information has been sold or provided in violation of the bill to bring *a specified action* for recovery of damages, costs, and attorney's fees. By imposing new duties on local transportation agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 8 (commencing with Section 31490) is added to Division 17 of the Streets and Highways Code, to read:

CHAPTER 8. ELECTRONIC TOLL COLLECTION SYSTEMS

31490. (a) ~~(1)~~ Except as otherwise provided in this section, a transportation agency may not sell or otherwise provide to any other person or entity personally identifiable information, including, but not limited to, travel pattern data, address, telephone number, bank account information, or credit card number, of any person who subscribes to an electronic toll collection system *or who uses a toll bridge, toll lane, or toll highway that employs an electronic toll collection system.*

~~(2) A transportation agency may make personally identifiable information of a subscriber described in paragraph (1) available to a law enforcement agency pursuant to a search warrant. Absent a provision in the search warrant to the contrary, the law enforcement agency shall immediately notify the subscriber that his or her records have been obtained and shall provide the subscriber with a copy of the search warrant and the identity of the law enforcement agency or peace officer to whom the records were provided.~~

*(b) A transportation agency that employs an electronic toll collection system shall establish a privacy policy regarding the collection and use of personally identifiable information and provide to subscribers of that system a copy of the privacy policy in a manner that is conspicuous and meaningful. The policy shall include, but need not be limited to, the following:*

*(1) The types of personally identifiable information that is collected by the agency.*

1     (2) *The categories of third-party persons or entities with whom*  
2 *the agency may share personally identifiable information.*

3     (3) *The process by which a transportation agency notifies*  
4 *subscribers of material changes to its privacy policy.*

5     (4) *The effective date of the privacy policy.*

6     (5) *The process by which a subscriber may review and request*  
7 *changes to any of his or her personally identifiable information.*

8     ~~(b)~~

9     (c) A transportation agency may, within practical business and  
10 cost constraints, store only personally identifiable information of  
11 a ~~subscriber~~ person such as the account name, credit card number,  
12 billing address, vehicle information, and other basic account  
13 information required to perform account functions such as billing,  
14 account settlement, or enforcement activities. All other information  
15 shall be discarded six months after the closure date of the billing  
16 cycle or 60 days after the bill has been paid, whichever occurs last.

17     ~~(e)~~

18     (d) A transportation agency shall take every effort, within  
19 practical business and cost constraints, to purge the personal  
20 account information of an account within 60 days after the date  
21 the account is closed or terminated. In no case shall a transportation  
22 agency maintain personal information more than 150 days after  
23 the date an account is closed or terminated.

24     (e) (1) *A transportation agency may make personally*  
25 *identifiable information of a person available to a law enforcement*  
26 *agency pursuant to a search warrant. Absent a provision in the*  
27 *search warrant to the contrary, the law enforcement agency shall*  
28 *immediately, but not more than 15 days, notify the person that his*  
29 *or her records have been obtained and shall provide the person*  
30 *with a copy of the search warrant and the identity of the law*  
31 *enforcement agency or peace officer to whom the records were*  
32 *provided.*

33     ~~(d) (1)~~

34     (2) (A) This section does not prohibit a peace officer, as defined  
35 in Section 830.1 or 830.2 of the Penal Code, when conducting a  
36 criminal or traffic collision investigation, from obtaining personally  
37 identifiable information of ~~persons who subscribe to an electronic~~  
38 ~~toll collection system~~; a person if the officer has good cause to  
39 believe that a delay in obtaining this information by seeking a  
40 search warrant would result in an imminent danger to the health

1 or safety of a member of the public. The peace officer shall provide  
2 the transportation agency with a written statement setting forth the  
3 basis for his or her good cause belief.

4 (2)

5 (B) When obtaining personally identifiable information of  
6 ~~persons who subscribe to an electronic toll collection system the~~  
7 *a person, the* peace officer shall, ~~within a reasonable time, but not~~  
8 ~~more than 30~~ *immediately, within no more than 15* days, notify  
9 ~~the subscriber person~~ that his or her records have been obtained,  
10 identify the law enforcement agency or peace officer to whom the  
11 records have been provided, and provide ~~the subscriber person~~  
12 with a copy of the written statement provided to the transportation  
13 agency pursuant to ~~paragraph (1)~~ *subparagraph (A)* that sets forth  
14 the basis for his or her good cause belief. If the notification to the  
15 ~~subscriber person~~ would interfere with an ongoing investigation,  
16 the peace officer or law enforcement agency may request a court  
17 order for a 30-day extension of the notice requirement.

18 (e)

19 (f) This section does not prohibit a transportation agency in  
20 subdivision (a) from providing aggregated traveler information  
21 derived from collective data that relates to a group or category of  
22 ~~subscribers persons~~ from which personally identifiable information  
23 has been removed.

24 (g) *This section does not prohibit a transportation agency from*  
25 *providing the license plate number of an intermodal chassis to the*  
26 *owner of the chassis for purposes of locating the driver of the*  
27 *chassis in the event the driver fails to pay the toll.*

28 (h) *This section does not prohibit a transportation agency from*  
29 *sharing data with another transportation agency solely to comply*  
30 *with interoperability specifications and standards adopted pursuant*  
31 *to Section 27565 regarding electronic toll collection devices and*  
32 *technologies. A third-party vendor may not use personally*  
33 *identifiable information obtained under this subdivision for a*  
34 *purpose other than described in this subdivision.*

35 (i) *Subdivision (d) shall not prohibit a transportation agency,*  
36 *or its designee, from performing financial and accounting functions*  
37 *such as billing, account settlement, enforcement, or other financial*  
38 *activities required to operate and manage the toll facilities.*

39 (j) *This section does not prohibit a transportation agency from*  
40 *communicating exclusively about its transportation-related*

*products and services on behalf of itself or the agency with which it contracts to subscribers of the transportation agency through a contracted third-party vendor using personally identifiable information limited to the subscriber's name, address, and electronic mail address. Each communication shall contain a clear and conspicuous notice and instructions to the subscriber regarding the process for terminating any future communication about a transportation-related product or service.*

(f)

(k) For purposes of this section, "transportation agency" means the Department of Transportation, the Bay Area Toll Authority, any entity operating a toll bridge, toll lane, or toll highway within the state, or any entity under contract with any of the above entities.

(g)

(l) For purposes of this section, "electronic toll collection system" is a system where a transponder, *camera-based vehicle identification system*, or other electronic medium is used to deduct payment of a toll from a subscriber's account *or to establish an obligation to pay a toll.*

~~(h) This section does not prohibit a transportation agency from sharing data with another transportation agency solely to comply with interoperability specifications and standards adopted pursuant to Section 27565 regarding electronic toll collection devices and technologies. A third-party vendor may not use personally identifiable information obtained under this subdivision for a purpose other than described in this subdivision.~~

~~(i) Subdivision (b) or (c) shall not prohibit a transportation agency, or its designee, from performing financial and accounting functions such as billing, account settlement, enforcement, or other financial activities required to operate and manage the toll facilities.~~

~~(j) This section does not prohibit a transportation agency from communicating exclusively about its transportation-related products and services on behalf of itself or the agency with which it contracts to subscribers of the transportation agency through a contracted third-party vendor using personally identifiable information limited to the subscriber's name, address, and electronic mail address. Each communication shall contain a clear and conspicuous notice and instructions to the subscriber regarding the process for terminating any future communication about a transportation-related product or service.~~

1     (m) *For purposes of this section, “person” means any person*  
2     *who subscribes to an electronic toll collection system or any person*  
3     *who uses a toll bridge, toll lane, or toll road that employs an*  
4     *electronic toll collection system.*

5     ~~(k)~~

6     (n) In addition to any other remedies provided by law, a  
7     ~~subscriber shall have the following remedies:~~

8     ~~(1) A subscriber whose personally identifiable information has~~  
9     ~~person whose personally identifiable information has~~ been  
10    knowingly sold or otherwise provided in violation of this section  
11    may bring an action to recover either actual damages or two  
12    thousand five hundred dollars (\$2,500) for each individual  
13    violation, whichever is greater, and may also recover reasonable  
14    costs and attorney’s fees.

15    ~~(2) A subscriber whose personally identifiable information has~~  
16    ~~been knowingly sold or otherwise provided three or more times~~  
17    ~~in violation of this section may bring an action to recover either~~  
18    ~~actual damages or two thousand five hundred dollars (\$2,500) for~~  
19    ~~each individual violation, whichever is greater, and may also~~  
20    ~~recover reasonable costs and attorney’s fees.~~

21    SEC. 2. If the Commission on State Mandates determines that  
22    this act contains costs mandated by the state, reimbursement to  
23    local agencies and school districts for those costs shall be made  
24    pursuant to Part 7 (commencing with Section 17500) of Division  
25    4 of Title 2 of the Government Code.