

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 179 Public Records/Tax Collectors
SPONSOR(S): Government Operations Subcommittee; Eagle and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 200

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	9 Y, 0 N	Zaborske	Miller
2) Government Operations Subcommittee	11 Y, 0 N, As CS	Williamson	Williamson
3) Finance & Tax Committee	14 Y, 0 N	Pewitt	Langston

SUMMARY ANALYSIS

In 2011, tax collectors were given authority to electronically send certain notices. Tax collectors may send notices of taxation to taxpayers by e-mail if the taxpayer has applied to participate in a prepayment installment plan, or if the tax collector has received express consent from the taxpayer to do so. Under current law, the taxpayer's e-mail address is a public record, and a government agency must post on its website that all e-mail addresses are public records.

The bill creates a public record exemption for a taxpayer's e-mail address held by a tax collector for the following purposes:

- Sending the taxpayer a quarterly tax notice for prepayment of estimated taxes;
- Obtaining the taxpayer's consent to send the tax notice;
- Sending the taxpayer an additional tax notice or delinquent tax notice; or
- Sending a third party, mortgagee, or vendee a tax notice.

If the tax collector holds an e-mail address for any other purpose, it is not exempt from public record requirements.

The public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the State Constitution.

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

The bill has an effective date of July 1, 2015.

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 creates a public record exemption; therefore, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

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.

Public Records Exemptions

The Legislature 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

The Open Government Sunset Review Act² provides that a public record 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:³

- 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.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁴

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those that have been determined to be confidential and exempt.⁵ If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.⁶ Also, if the information is deemed to be confidential it may be released only to those persons and entities designated in statute.⁷ However, the agency is not prohibited from disclosing the records in all circumstances where the records are exempt only.⁸

Tax Collectors' E-mail Notices

¹ Art I., s. 24(c), Fla. Const.

² See s. 119.15, F.S.

³ S. 119.15(6)(b), F.S.

⁴ S. 119.15(3), F.S.

⁵ *WFTV, Inc. v. Sch. Bd. of Seminole County*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review den.*, 892 So.2d 1015 (Fla. 2004).

⁶ *Id.*

⁷ *Id.*

⁸ See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *review den.*, 589 So.2d 289 (Fla. 1991).

In 2011, tax collectors were given authority to send electronically certain notices. Tax collectors may send notices of taxation to taxpayers by e-mail if the taxpayer has applied to participate in a prepayment installment plan,⁹ or if the tax collector has received express consent from the taxpayer to do so.¹⁰ Under current law, the taxpayer's e-mail address is a public record, and a government agency must post on its website that all e-mail addresses are public records.¹¹

Effect of Proposed Changes

The bill creates a public record exemption for e-mail addresses held by local tax collectors for the purpose of sending certain notices and obtaining consent from the taxpayer to send the tax notice via e-mail. Specifically, a taxpayer's e-mail address held by a tax collector is exempt from public record requirements for the purpose of:

- Sending the taxpayer a quarterly tax notice for prepayment of estimated taxes;
- Obtaining the taxpayer's consent to send the tax notice;
- Sending the taxpayer an additional tax notice or delinquent tax notice; or
- Sending a third party, mortgagee, or vendee a tax notice.

If the tax collector holds an e-mail address for any other purpose, it is not exempt from public record requirements. For example, if the tax collector for the above-mentioned reasons holds an e-mail address and the same e-mail address is held for a purpose other than those reasons, then the e-mail address would be protected from public disclosure in the former example, but not in the latter example. As such, it is unclear how tax collector offices will distinguish between those public record requests for e-mail addresses that are exempt under the bill and those that are still available for public disclosure, when the same e-mail address is involved.

The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a public necessity statement as required by the State Constitution. The public necessity statement provides that e-mail addresses are unique to individuals and, when combined with other personal identifying information, can be used for identity theft, taxpayer scams, and other invasive contacts. It further provides that the public availability of personal e-mail addresses invites and exacerbates thriving and well-documented criminal activities and puts taxpayers at an increased risk of harm, and that making e-mail addresses confidential would significantly curtail such harm. No information is available as to whether scams or frauds have been perpetrated utilizing any Florida property tax notices.

B. SECTION DIRECTORY:

Section 1: Creates s. 197.3225, F.S., providing an exemption from public records requirements for e-mail addresses held by tax collectors for certain tax notice purposes; provides for further legislative review and repeal of the exemption under the Open Government Sunset Review Act.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of July 1, 2015.

⁹ S. 197.222(3), F.S.

¹⁰ Ss. 197.322(3), 197.343, and 197.344(1), F.S.

¹¹ S. 668.6076, F.S., (requiring "[a]ny agency . . . or legislative entity that operates a website and uses electronic mail . . . post the following statement . . . : Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.").

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on tax collectors because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, tax collectors could incur costs associated with redacting the exempt e-mail addresses prior to releasing a record. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of tax collectors.

To the extent the public record exemption encourages taxpayers to choose to receive certain information via e-mail, tax collectors could reduce the amount of money spent on postage.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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 or expanded public record or public meeting exemption. The bill creates a 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 public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the e-mail address of a taxpayer held for use under certain circumstances. The bill's public necessity statement suggests that public records disclosures combining e-mail addresses with other personal identifying information could harm taxpayers. No information is available on whether there are any documented instances of such harm in relation to any taxpayer notices underlying the proposed exemption.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for executive branch rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Section 2 of the bill sets forth the public necessity statement. As written, a taxpayer's e-mail address is exempt if held by a tax collector for the purpose of obtaining the consent of the taxpayer for the electronic transmission of a tax notice and sending a tax notice, but does not specifically state which types of tax notices (a quarterly tax notice for prepayment of estimated taxes, an additional tax notice or delinquent tax notice, and a tax notice to a designated third party, mortgagee, or vendee).

Other Comments: Department of Revenue

According to the Department of Revenue, the list of documents in the bill may not be an exhaustive list of official documents authorized to be sent to and from tax collectors by e-mail.¹² It is unclear if the omission from the list of certain purposes for which a tax collector holds a taxpayer's e-mail address is intentional or not.¹³

Other Comments: E-mail Correspondence

Using e-mail correspondence comes with some risks. "Phishing," for example, "is a scam typically carried out through unsolicited email and/or websites that pose as legitimate sites and lure unsuspecting victims to provide personal and financial information."¹⁴ As recently as January 8, 2015, the Internal Revenue Service on its website warned consumers about e-mail scams where consumers receive an e-mail claiming that a payment through the Electronic Federal Tax Payment System was rejected and directing the recipient to a bogus link, which, when clicked, downloads malicious software (malware) that infects the victim's computer and sends back personal and financial information from the computer to use to commit identity theft.¹⁵ No information is available on whether similar scams have been perpetrated utilizing Florida property tax notices.

In 2004, Florida enacted the Electronic Mail Communications Act¹⁶ "to promote the integrity of electronic commerce and . . . to protect the public and legitimate businesses from deceptive and unsolicited commercial electronic mail."¹⁷ The Act generally prohibits sending spam e-mails that falsify the email routing information, or contain false or misleading information. Under the Act, spammers may be sued by the Attorney General and Internet Service Providers, and may have to pay actual damages or damages of \$500 for each unlawful message, as well as attorney's fees and costs. Additionally, under the Act, a person commits a misdemeanor of the first degree or a felony of the third degree¹⁸ if the person transmits to an e-mail address held by a Florida resident certain unsolicited commercial

¹² Ss. 197.182(1)(m), 197.432(7), and 197.472(5), F.S.

¹³ Department of Revenue, Legislative Bill Analysis of HB 179 (July 1, 2015) (on file with the Government Operations Subcommittee).

¹⁴ Internal Revenue Service, Report Phishing and Online Scams, available at <http://www.irs.gov/uac/Report-Phishing> (accessed January 30, 2015).

¹⁵ Beware of e-Mail Scams about Electronic Federal Tax Payments, <http://www.irs.gov/uac/Beware-of-e-Mail-Scams-about-Electronic-Federal-Tax-Payments> (accessed January 30, 2015).

¹⁶ Ch. 2004-233, L.O.F.; 2004SB2574; codified at ss. 668.60 - 668.610, F.S.

¹⁷ S. 668.601, F.S.

¹⁸ S. 668.608, F.S.

electronic mail messages.¹⁹ Current law also criminalizes the use of personal identification information, including e-mail addresses.²⁰

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2015, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The committee substitute provides that taxpayer e-mail addresses are exempt from public record requirements, instead of confidential and exempt, if held by a tax collector for certain purposes.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

¹⁹ S. 668.603, F.S. Specifically, the Act prohibits transmitting an unsolicited commercial electronic mail message to an e-mail address held by a Florida resident which uses a third party's Internet domain name without permission, contains falsified or missing routing information misleading information in identifying the point of origin or the transmission path, contains false or misleading information in the subject line, or contains false or deceptive information in the body of the message designed to cause damage. S. 668.603(1)(a)-(d), F.S.

²⁰ S. 817.568, F.S.