

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7041      PCB HWSS 15-02    Public Records/Customer E-mail Addresses/DHSMV  
**SPONSOR(S):** Highway & Waterway Safety Subcommittee, Steube  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 7040

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Highway & Waterway Safety Subcommittee	13 Y, 0 N	Whittaker	Smith
1) Government Operations Subcommittee	11 Y, 0 N	Williamson	Williamson
2) Economic Affairs Committee	16 Y, 1 N, As CS	Whittaker	Creamer

### SUMMARY ANALYSIS

The Department of Highway Safety and Motor Vehicles (department) is authorized to collect electronic mail addresses and use electronic mail in lieu of the United States Postal Service for the purposes of issuing a certificate of title, providing motor vehicle renewal notices, and providing driver license renewal notices.

The bill creates a public record exemption for electronic mail addresses held by the department for the purpose of providing notices and renewal notifications. The exemption applies to e-mail addresses held by the department before, on, or after the effective date of the exemption.

The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.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 bill does not appear to have a fiscal impact on state or local governments.

The bill has an effective date of upon becoming a law.

**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 new public record exemption; thus, 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 119.071(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

##### Public Record 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.<sup>1</sup>

The Open Government Sunset Review Act<sup>2</sup> 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:<sup>3</sup>

- 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 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>4</sup>

##### Exempt versus Confidential and Exempt

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

##### E-Mail Addresses and Crimes

The Department of Highway Safety and Motor Vehicles (department) was the subject of an e-mail phishing incident in which fraudsters used the department's name and e-mail address,

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<sup>1</sup> FLA CONST. art. I, s. 24(c).

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 119.15(3), F.S.

<sup>5</sup> *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004)

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

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

DoNotReply@flhsmv.gov, to send e-mails containing transactional receipts to the public. The e-mails directed the recipient to visit a third party website, which may have contained computer programs designed to harm the user.<sup>9</sup>

The Better Business Bureau posted an alert on its website, warning individuals of e-mail phishing scams. They specifically address e-mails containing confirmation messages for recent driver license and vehicle registration renewals appearing to come from the department. The e-mail including a link directing the individual to a third party website meant to download malware, which may be used to scan a computer for personal and/or banking information that could be used for identify theft.<sup>10</sup>

#### Department of Highway Safety and Motor Vehicles and Electronic Mail Addresses

The Department of Highway Safety and Motor Vehicles (department) is the records custodian for motor vehicle records, which contain personal information such as a driver's social security number. The department is authorized to collect electronic mail addresses and use electronic mail, in lieu of the United States Postal Service, for the purposes of issuing a certificate of title,<sup>11</sup> providing motor vehicle renewal notices,<sup>12</sup> and providing driver license renewal notices.<sup>13</sup>

Under current law, the electronic mail address is a public record. The department must post a notice on its website alerting users that electronic mail addresses are a public record and advising users not to send electronic mail to the department if they do not want their electronic mail address released pursuant to a public record request.<sup>14</sup>

#### **Effect of Proposed Changes**

The bill creates a public record exemption for electronic mail addresses held by the department for certain purposes. Specifically, electronic mail addresses held by the department are exempt from public record requirements if held pursuant to:

- Section 319.40(3), F.S., which authorizes the department to collect electronic mail addresses and use such address as a method of notification.
- Section 320.95(2), F.S., which authorizes the department to collect electronic mail addresses and use such addresses for the purpose of providing renewal notices.
- Section 322.08(8), F.S., which authorizes the department to collect electronic mail addresses and use such address for the purpose of providing renewal notices.

The exemption applies to e-mail addresses held by the department before, on, or after the effective date of the exemption.

The public record exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., 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.

#### **B. SECTION DIRECTORY:**

Section 1 Amends s. 119.0712, F.S., creating a public record exemption for electronic mail addresses held by the Department of Highway Safety and Motor Vehicles for the

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<sup>9</sup> Department of Highway Safety and Motor Vehicles, *Fraudsters Use Agency's Name and Email Address for Phishing Expedition – Highway safety agency warns of email spam*, Press Release, Feb. 7, 2013 <http://www.flhsmv.gov/news/pdfs/PR020713a.pdf> (last visited March 27, 2015)

<sup>10</sup> Better Business Bureau, *Phishing Email Poses as Florida DMV*, February 22, 2013 <http://www.bbb.org/blog/2013/02/phishing-email-poses-as-florida-dmv/> (last visited March 27, 2015)

<sup>11</sup> Section 319.40(3), F.S.

<sup>12</sup> Section 320.95(2), F.S.

<sup>13</sup> Section 322.08(8), F.S.

<sup>14</sup> Section 668.6076, F.S.

purpose of conducting motor vehicle record and driver license transactions; providing for future legislative review and repeal of the exemption.

Section 2 Provides a statement of public necessity.

Section 3 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:

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

### 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

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

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 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.

### 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 records exemption for electronic mail addresses held by the Department of Highway Safety and Motor Vehicles for the purpose of conducting motor vehicle record and driver license transactions.

#### B. RULE-MAKING AUTHORITY:

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

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

##### Drafting Issues

The bill provides a public record exemption for electronic mail addresses, also known as e-mail addresses, held by the department. The sections authorizing the department to provide electronic notification refer to the addresses as “electronic mail addresses.” As such, inclusion of the phrase “also known as e-mail addresses” is unnecessary.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 26, 2015, The Economic Affairs Committee adopted one amendment to **HB 7041** and reported the bill favorably as a committee substitute. The amendment:

- Provides that the exemption applies to e-mail addresses held by the department before, on, or after the effective date of the exemption.

This analysis is drafted to the committee substitute as reported favorably by the Economic Affairs Committee.