

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 Rules

BILL: CS/SB 200

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Latvala

SUBJECT: Public Records/E-mail Addresses/Tax Notices

DATE: March 11, 2015 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Stearns | Yeatman | CA | Favorable |
| 2. | Kim | McVaney | GO | Fav/CS |
| 3. | Stearns | Phelps | RC | Favorable |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 200 creates an exemption from the public records laws for e-mail addresses of taxpayers held by tax collectors for the purposes of e-mailing tax notices or obtaining permission from the taxpayer to do so. Current law does not provide an exemption for e-mail addresses held for such purposes.

The bill provides for repeal of the exemption on October 2, 2020, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

II. Present Situation:

Public Records Laws

The State 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 State Constitution states that the records of the legislative, executive, and judicial branches are all subject to public disclosure.²

Only the Legislature may create an exemption to public records requirements.³ There is a difference between records the Legislature designates as ‘exempt’ from public records requirements and those the Legislature designates as ‘confidential and exempt.’ A record classified as exempt from public disclosure may be disclosed under certain circumstances.⁴ If the Legislature designates a record as confidential and exempt from public disclosure, a public records custodian may not release the record to anyone other than the persons or entities specifically designated in the statutory exemption.⁵

An exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁶ 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 provisions⁷ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁸

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.⁹ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁰

Public Records Status of E-mail Addresses and Agency Website Notice

Under Florida law, e-mail addresses are public records.¹¹ Agency¹² websites that use e-mail are required to post a notice to users making them aware of this fact and advising them not to send e-mail to the agency if they do not want their e-mail address released in response to a public records request.¹³

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ FLA. CONST., art. I, s. 24(c).

⁴ *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)

⁵ Op. Att’y Gen. Fla. 85-62 (1985)

⁶ FLA. CONST., art. I, s. 24(c).

⁷ The bill may, however, contain multiple exemptions that relate to one subject.

⁸ FLA. CONST., art. I, s. 24(c).

⁹ Section 119.15, F.S.

¹⁰ Section 119.15(3), F.S.

¹¹ Section 119.011(12), F.S., defines “public records” as “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.” See Attorney General Opinion 96-34, May 15, 1996.

¹² Section 119.011(2), F.S., defines “agency” 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.”

¹³ Section 668.6076, F.S.

Notices of Taxation

Tax collectors may send notices of taxation to taxpayers by e-mail in two situations: (1) if the taxpayer has applied to participate in a prepayment installment plan,¹⁴ or (2) if the tax collector has received express consent from the taxpayer to do so.¹⁵

E-mail Addresses and Crimes

Fraudsters replicate federal and state tax agency websites and use them when e-mailing the public for criminal purposes. The Internal Revenue Service (IRS) has issued consumer warnings about fraudsters posing as the IRS and soliciting personal information in the form of an e-mail, a scam which is known as phishing. The fake notice may entice a taxpayer by stating that the taxpayer is due for a refund and the taxpayer must submit personal and financial information in order for the refund to be disbursed. Another fake notice may threaten an individual if he or she does not provide requested personal information. The fraudster then uses the information to empty a victim's bank account, use the victim's credit cards and apply for loans in the victim's name.¹⁶ According to the IRS, phishing and identity theft are two of the top twelve tax scams employed by fraudsters.¹⁷ In 2014, the Governor of New York issued a statement warning consumers that scammers were posing as the IRS and the New York Department of Taxation and Finance and threatening people with fines, arrest and other penalties if they did not immediately pay owed taxes.¹⁸

In Florida, Attorney General Pam Bondi has issued consumer protection warnings and news releases about the dangers of phishing.¹⁹ On January 20, 2015, Attorney General Pam Bondi's office issued a news release about tax fraud awareness, and warned the public about identity thieves accessing personal information by e-mail.²⁰ The Florida Department of Highway Safety and Motor Vehicles was the subject of the e-mail phishing incident in which its name, e-mail address and transactional receipts were sent 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.²¹

¹⁴ Section 197.222(3), F.S.

¹⁵ Sections 197.322(3), 197.343(1), and 197.344(1), F.S.

¹⁶ Identity Theft E-mail Scams a Growing Problem. IRS publication FS 2008-9, dated January 2008.

¹⁷ IRS Completed the "Dirty Dozen" Tax Scams of 2015. IRS publication IR-2015-26, dated February 2015.

¹⁸ Consumer Alert- NYS Division of Consumer Protection and the NYS Tax Department Caution New Yorkers to Beware of Elaborate Tax Collection Scams. <http://www.tax.ny.gov/press/rel/2014/consumerwarning040114.htm>. Last checked on February 11, 2015.

¹⁹ Florida Attorney General, Consumer Protection, How to Protect Yourself: Phishing.

http://myfloridalegal.com/__85256CC5006DFCC3.nsf/0/D3C503749286AF3885256E4C0072015D?Open&Highlight=0,phishing, last checked February 9, 2015.

²⁰ Tax Identity Theft Awareness Week, Attorney General Pam Bondi News Release, Dated January 25, 2015

http://myfloridalegal.com/__852562220065EE67.nsf/0/178F807FB451A69085257DD900737B2E?Open&Highlight=0,tax

²¹ Fraudsters Use Agency's Name and Email Address for Phishing Expedition- Highway safety agency warns of email spam. Press Release dated February 7, 2013 by the Florida Department of Highway Safety and Motor Vehicles.

<http://www.flhsmv.gov/news/2013.htm>. Last visited on February 12, 2015.

III. Effect of Proposed Changes:

This bill makes taxpayer e-mail addresses exempt from the public records laws if the e-mail addresses are held by tax collectors specifically for the purposes of:

- Sending a quarterly tax notice for prepayment of estimated taxes to tax payers, pursuant to s. 197.222(3), F.S.;
- Obtaining the taxpayer's consent to send tax notices, and e-mailing tax notices stating the amount of taxes due or outstanding and any discounts which may apply pursuant to s. 197.322(3), F.S.;
- Sending an additional tax notice or delinquent tax notice to the taxpayer under s. 197.343, F.S.; or
- Sending a tax notice to a designated third party, mortgagee, or vendee as provided under s. 197.344(1), F.S.

The bill does not make taxpayer e-mail addresses provided to a tax collector for any other purpose exempt from the public record.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity states that the Legislature finds that e-mail addresses, when combined with personal identifying information, can be used for identity theft, scams and invasive contact. The public necessity statement provides that this exemption helps protect taxpayers from harm.

The bill provides that the exemption will take effect on July 1, 2015. The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

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 for taxpayer e-mail addresses held by a tax collector; 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 for taxpayer information; 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 record exemption limited to the e-mail address of a taxpayer when those e-mail addresses are used for the four enumerated purposes named in the bill. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill likely will benefit taxpayers by reducing their exposure to economic harm from identity theft or spam e-mail.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on tax collectors because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. Tax collectors may have to increase spending on technology if new computer programs are employed to separate e-mail addresses used for different purposes. In addition, tax collectors may incur costs associated with redacting exempt information prior to releasing a record. The costs, however, may be absorbed as part of the day-to-day responsibilities of the staff of the tax collectors.

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

The analysis performed by the Department of Revenue²² states that 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.²³ 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.

VIII. Statutes Affected:

This bill creates section 197.3225 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on February 17, 2015:

The CS makes a technical change to status of the exemption from 'confidential and exempt' to 'exempt.' As originally drafted, the bill provided no means for the records custodian to release e-mail addresses to any entity without a court order. This change permits the records custodian the flexibility to release e-mail addresses at his or her discretion.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²² 2015 Department of Revenue Legislative Bill Analysis, dated January 12, 2015.

²³ See ss. 197.182(1)(m), 197.432(7), and 197.472(5), F.S.