

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 421 Pub. Rec./Taxpayer's E-mail Address

SPONSOR(S): Local & Federal Affairs Committee; Hooper

TIED BILLS: **IDEN./SIM. BILLS:** SB 538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	17 Y, 0 N, As CS	Kelly	Rojas
2) Government Operations Subcommittee			
3) Finance & Tax Subcommittee			

SUMMARY ANALYSIS

CS/HB 421 would create s. 197.3225, F.S., which would exempt tax collectors in Florida from releasing a taxpayer's email address when it is obtained to be used under the following circumstances:

- (1) sending a quarterly tax notice for prepayment of estimated taxes;
- (2) obtaining the taxpayer's consent to send the tax notice;
- (3) sending an additional tax notice or delinquent tax notice to the taxpayer;
- (4) sending a tax notice to the designated third party, mortgagee, or vendee.

These e-mail addresses will be considered confidential and exempt from public record requirements. However, email addresses provided by a taxpayer on the tax collector's website for other means of correspondence will not be exempt from Florida's public records laws

The bill provides for repeal of the exemption on October 2, 2019, 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 creates a public record exemption for certain taxpayer email addresses; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0421b.LFAC

DATE: 3/7/2014

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A tax payer must first give consent to their local tax collector in order for the tax collector to retain an individual's email address.¹ Tax collectors utilize email to send these electronic tax notices because email is becoming a frequently used mechanism for business communication due to its efficiency and low cost.

Using email correspondence does not come without its risks. For example, the IRS has cited various recent scams related to the use of taxpayers' email addresses. In one case, numerous taxpayers received e-mails claiming to come from the IRS, asking the targeted taxpayer for personal account information.²

Under current law, an agent of the government must post a disclaimer on the agent's website stating all email addresses used to send messages to the agent are public records and thus, are subject to Florida's public record laws.³

Background

Public Records

Access to government records is a recognized right in the Florida Constitution.⁴ Specifically, the Florida Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government, and all agents that belong to these branches.⁵ The right to public records is further codified in the Florida Statutes, which states all state, county, and municipal records are open for public inspection and that access to these public records is the duty of each respective agency.⁶ These agencies must allow the public records to be inspected and copied under reasonable time, conditions, and by the supervision of the custodian of those public records.⁷

Public Records Exemptions

While all government records are initially subject to Florida's public records laws, the Legislature may provide through general law certain exemptions from the Florida Constitution and Florida Statutes public records law.⁸ This exemption must include:

- (1) a public necessity statement, showing a specific the public necessity that justifies the exemption; and
- (2) this exemption is no broader than necessary to accomplish its public purpose.⁹

These requirements are also codified in the Open Government Sunset Review Act (Act), and thus a public records exemption must also be subject to this Act.¹⁰ Under this Act, the requisite public necessity statement must fall under one of the following categories:

¹ See ss. 197.222(3); 197.322(3); 197.343; 197.344(1), F.S.

² Internal Revenue Service, Problem Alerts, *available at* <http://www.irs.gov/uac/Problem-Alerts>.

³ Section 668.6076, F.S.

⁴ FLA. CONST., art. I, s. 24(a).

⁵ "Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution." FLA. CONST., art. I, s. 24(a).

⁶ Section 119.01(1), F.S.

⁷ Section 119.07(1)(a), F.S.

⁸ FLA. CONST., art. I, s. 24(c)-(d).

; Section 119.07(1)(d)-(f).

⁹ FLA. CONST., art. I, s. 24(c)-(d).

- (1) allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- (2) protecting 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; or
- (3) protecting trade or business secrets.¹¹

Further, per the Act, the exemption is subject to repeal on October 2nd of the 5th year of the law's enactment, unless the Legislature acts to reenact the exemption.¹²

CS/HB 421

In the requisite public necessity statement, CS/HB 421 states email is an increasingly used method used for business communication. As such, local tax collectors have been using this method to carry out business with local taxpayers via taxpayer email addresses. Currently, taxpayers' emails are public records. These taxpayer email addresses, used in combination with other readily accessible taxpayer information, make various types of identity theft, taxpayer scams, or other invasive contacts easy to execute. Thus, exempting these email addresses is one way to prevent identity theft, taxpayer scams, or other invasive contacts. 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. However, the DOR has stated the stated circumstances in which a taxpayer's email address will be exempt may not be an exhaustive list of official documents that are sent from local tax collector via email.¹³ Finally, CS/HB 421 includes the requisite repeal date on October 2nd of the 5th year of the law's enactment.

After the 2013 Legislative Session, Governor Scott vetoed HB 249, a similar bill which provided for a similar exemption for voter email addresses collected by local supervisor of elections across the state.

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption.¹⁴ The bill creates a public records exemption; thus, it requires a two-thirds vote for passage.

Effect of Proposed Changes

CS/HB 421 would create s. 197.3225, F.S., which would exempt tax collectors in Florida from releasing a taxpayer's emails when the taxpayer's email is obtained to be used under the following circumstances:

- (1) sending a quarterly tax notice for prepayment of estimated taxes;¹⁵
- (2) obtaining the taxpayer's consent to send the tax notice;¹⁶
- (3) sending an additional tax notice or delinquent tax notice to the taxpayer;¹⁷
- (4) sending a tax notice to the designated third party, mortgagee, or vendee.¹⁸

These e-mail addresses will be considered confidential and exempt from public record requirements.¹⁹

¹⁰ Section 119.15(2)-(7), F.S.

¹¹ *Id.*

¹² Section 119.15(3), F.S.

¹³ Florida Department of Revenue, 2014 Bill Analysis, HB 421.

¹⁴ FLA. CONST., art. I, s. 24(c).

¹⁵ Section 197.222(3), F.S.

¹⁶ Section 197.322(3), F.S.

¹⁷ Section 197.343, F.S.

¹⁸ Section 197.344(1), F.S.

¹⁹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a

However, email addresses provided by a taxpayer on the tax collector's website for other means of correspondence will not be exempt from Florida's public records laws. Pursuant to s. 668.6076, F.S., this bill would not relinquish the requirement for a government's agent to post a disclaimer stating all email addresses used to send messages to the agent are public records and thus, are subject to Florida's public record laws.²⁰

B. SECTION DIRECTORY:

Section 1: Creates s. 197.3225, F.S., providing for an exemption from public records requirements email addresses collected by tax collectors for certain tax notice purposes; provisions 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 a contingent 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:

Indeterminate. The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, those agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62, August 1, 1985.

²⁰ Section 668.6076, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not applicable.

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 for certain taxpayer email addresses; 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 certain taxpayer email addresses; 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 collected for use under certain circumstances. 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.

B. RULE-MAKING AUTHORITY:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2014, the Local & Federal Affairs Committee adopted one amendment, which changed the word in line 53 from "identify" to "identity." The analysis is updated to reflect this amendment.