

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Government Operations Subcommittee; 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	13 Y, 0 N, As CS	Stramski	Williamson
3) Finance & Tax Subcommittee			

SUMMARY ANALYSIS

Current law permits a tax collector to use electronic means to communicate with an individual in certain circumstances with the individual's consent. However, there is no public records exemption for an individual who provides his or her e-mail to a tax collector.

This bill creates s. 197.3225, F.S., which provides that an e-mail address held by a tax collector for the following purposes is confidential and exempt from public records requirements:

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

An e-mail address provided by a taxpayer to the tax collector via the tax collector's website or other correspondence for a purpose other than those listed is not confidential and exempt from the state's public record 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.

The bill does not appear to have a fiscal impact on state government. The bill may have an insignificant fiscal impact on local government.

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 e-mail addresses; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

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. The Legislature, however, 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

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. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting 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:

- 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.

Tax Collector Use of Taxpayer E-mail

Subject to a recipient's consent to receive certain documents electronically, a tax collector may use e-mail to send, among other communications, a notice of denial of a refund, a notice of tax amounts due, a notice to a taxpayer whose payment has not been timely received, and a tax notice to a taxpayer, mortgagee, or vendee of real property.³

Tax collectors utilize e-mail to send electronic tax notices due to its efficiency and low cost. However, using e-mail correspondence does not come without its risks. For example, the IRS has cited various recent scams related to the use of taxpayers' e-mail addresses. In one case, numerous taxpayers received e-mails claiming to come from the IRS, asking the targeted taxpayer for personal account information.⁴

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ See ss. 197.182(1)(m), 197.222(3); 197.322(3); 197.343; 197.344(1), F.S.

⁴ Internal Revenue Service, Problem Alerts, available at <http://www.irs.gov/uac/Problem-Alerts>.

E-mail Notice

Under current law, an agency⁵ that operates a website and uses e-mail must post the following statement in a conspicuous location on its website:⁶

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.

Effect of Bill

The bill creates s. 197.3225, F.S., which provides that a taxpayer's e-mail address held by a tax collector for the following purposes is confidential and exempt from public record requirements:⁷

- Sending a quarterly tax notice for prepayment of estimated taxes;⁸
- Obtaining the taxpayer's consent to send the tax notice;⁹
- Sending an additional tax notice or delinquent tax notice to the taxpayer;¹⁰ and
- Sending a tax notice to the designated third party, mortgagee, or vendee.¹¹

The bill provides that an e-mail address provided by a taxpayer to the tax collector via the tax collector's website or other correspondence for a purpose other than those listed is not confidential and exempt from the state's public record laws.

The bill provides that the exemption will stand repealed 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.

B. SECTION DIRECTORY:

Section 1: Creates s. 197.3225, F.S., providing for an exemption from public records requirements for e-mail addresses collected by tax collectors for certain tax notice purposes; providing for 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, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

⁵ The term "agency" is defined in s. 119.011(2), F.S., to mean 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 chapter 119, F.S., 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.

⁶ Section 668.6076, F.S.

⁷ The DOR has stated the stated circumstances in which a taxpayer's e-mail address will be exempt may not be an exhaustive list of official documents that are sent from local tax collector via e-mail. Florida Department of Revenue, 2014 Bill Analysis, HB 421. For example, this bill does not exempt an e-mail address kept by a tax collector for the purpose of electronically transmitting a notice of a denial of refund pursuant to s. 197.182(1)(m), F.S.

⁸ Section 197.222(3), F.S.

⁹ Section 197.322(3), F.S.

¹⁰ Section 197.343, F.S.

¹¹ Section 197.344(1), F.S.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely 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 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 tax collector's office.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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 a 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 for certain taxpayer e-mail 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 e-mail 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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Email Submitted for Purposes Listed in this Bill

The bill provides that e-mail addresses submitted only for the specific purposes listed in the bill are confidential and exempt from public records requirements. It is unclear how a tax collector might be able to identify the specific purpose that an e-mail address is provided for, as statutes authorize tax collectors to communicate electronically with taxpayers for a range of purposes.

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.”

On March 31, 2014, the Government Operations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments removed references to an unrelated section of law, and clarified that an e-mail address submitted to a tax collector for purposes other than those listed in the bill is not confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

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