

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 538

INTRODUCER: Senators Latvala and Brandes

SUBJECT: Public Records/Taxpayer's Email Address

DATE: March 25, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	<u>Stearns</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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## I. Summary:

SB 538 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. This bill makes those e-mail addresses confidential and exempt from the public records disclosure laws.

The bill provides for repeal of the exemption on October 2, 2019, 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 Status of E-mail Addresses; Agency Website Notice

Under Florida law, e-mail addresses are public records.<sup>1</sup> Agency<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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."

e-mail to the agency if they do not want their e-mail address released in response to a public records request.<sup>3</sup>

### **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.<sup>4</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> 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 provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>10</sup> 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.<sup>11</sup>

### **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,<sup>12</sup> or (2) if the tax collector has received express consent from the taxpayer to do so.<sup>13</sup>

To be able to e-mail a tax notice to a taxpayer, a tax collector must first have the taxpayer's email address on file.

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<sup>3</sup> Section 668.6076, F.S.

<sup>4</sup> FLA. CONST., art. I, s. 24(a).

<sup>5</sup> *Id.*

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see 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)). If the Legislature designates a 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).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S.

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 197.222(3), F.S.

<sup>13</sup> Sections 197.322(3), 197.343, and 197.344(1), F.S.

### III. Effect of Proposed Changes:

This bill makes taxpayer e-mail addresses confidential and 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 under s. 197.222(3), F.S., to the taxpayer;
- Obtaining the taxpayer's consent to send the tax notice described in 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.

However, taxpayer e-mail addresses provided to a tax collector via the tax collector's website for purposes other than those listed above are not exempt from the public records laws.

This bill provides that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity statement provides that a person's email address, when combined with their personal identifying information, exposes people to identity theft, taxpayer scams and invasive contacts.

The bill provides that the exemption will take effect on July 1, 2014.

### 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:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional 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 provides that a tax payer's e-mail address is confidential and exempt in four specific instances. 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.

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

None.

**B. Private Sector Impact:**

The bill likely would benefit taxpayers by reducing their exposure to economic harm from tax related fraud, identity theft or spam e-mail.

**C. Government Sector Impact:**

The bill may impact tax collectors, because staff responsible for complying with public record requests could require additional training related to expansion of the public record exemption. In addition, tax collectors could incur costs associated with redacting 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 staff of the tax collectors.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.)

None.

- B. **Amendments:**

None.

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

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