

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 179	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Government Operations Subcommittee; Eagle and others	117 Y's	0 N's
COMPANION BILLS:	CS/SB 200	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 179 passed the House on April 24, 2015, as CS/SB 200. The bill provides a public record exemption for a taxpayer's e-mail address held by a tax collector for the purpose of:

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

If the tax collector holds an e-mail address for any other purpose, it is not exempt from public record requirements.

The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal by the Legislature. The bill 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 was approved by the Governor on May 14, 2015, ch. 2015-13, L.O.F., and will become effective on July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Records 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.¹

The Open Government Sunset Review Act² 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:³

- 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.⁴

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those that have been determined to be confidential and exempt.⁵ If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.⁶ Also, if the information is deemed to be confidential it may be released only to those persons and entities designated in

¹ FLA. CONST. art. I, s. 24(c).

² See s. 119.15, F.S.

³ S. 119.15(6)(b), F.S.

⁴ S. 119.15(3), F.S.

⁵ *WFTV, Inc. v. Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review den.*, 892 So. 2d 1015 (Fla. 2004).

⁶ *Id.*

statute.⁷ However, the agency is not prohibited from disclosing the records in all circumstances where the records are exempt only.⁸

Tax Collectors' E-mail Notices

In 2011, tax collectors were given authority to send electronically certain notices. Tax collectors may send notices of taxation to taxpayers by e-mail if the taxpayer has applied to participate in a prepayment installment plan,⁹ or if the tax collector has received express consent from the taxpayer to do so.¹⁰ Under current law, the taxpayer's e-mail address is a public record, and a government agency must post on its website that all e-mail addresses are public records.¹¹

Effect of Proposed Changes

The bill creates a public record exemption for e-mail addresses held by local tax collectors for the purpose of sending certain notices and obtaining consent from the taxpayer to send the tax notice via e-mail. Specifically, a taxpayer's e-mail address held by a tax collector is exempt from public record requirements for the purpose of:

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

If the tax collector holds an e-mail address for any other purpose, it is not exempt from public record requirements. For example, if the tax collector for the above-mentioned reasons holds an e-mail address and the same e-mail address is held for a purpose other than those reasons, then the e-mail address would be protected from public disclosure in the former example, but not in the latter example. As such, it is unclear how tax collector offices will distinguish between those public record requests for e-mail addresses that are exempt under the bill and those that are still available for public disclosure, when the same e-mail address is involved.

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 public necessity statement provides that e-mail addresses are unique to individuals and, when combined with other personal identifying information, can be used for identity theft, taxpayer scams, and other invasive contacts. It further provides that the public availability of personal e-mail addresses invites and exacerbates thriving and well-documented criminal activities and puts taxpayers at an increased risk of harm, and that making e-mail addresses confidential would significantly curtail such harm. No information is available as to whether scams or frauds have been perpetrated utilizing any Florida property tax notices.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁷ *Id.*

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

⁹ S. 197.222(3), F.S.

¹⁰ Ss. 197.322(3), 197.343, and 197.344(1), F.S.

¹¹ S. 668.6076, F.S., (requiring "[a]ny agency . . . or legislative entity that operates a website and uses electronic mail . . . post the following statement . . . : 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.").

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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 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 exempt e-mail addresses prior to releasing a record. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of tax collectors.

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