

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 7001 PCB OTM 20-02 OGSR/E-mail Addresses/Department of Highway Safety and Motor Vehicles

SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Plasencia

TIED BILLS: **IDEN./SIM. BILLS:** SB 7022

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 7001 passed the House on January 29, 2020, and subsequently passed the Senate on February 26, 2020.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Department of Highway Safety and Motor Vehicles (department) is the custodian of motor vehicle records, which contain personal information about drivers and motor vehicle owners. The department is authorized to collect and use e-mail addresses for the purpose of providing title certificate notifications, motor vehicle registration renewal notices, and driver license renewal notices. Current law provides a public record exemption for such e-mail addresses collected by the department.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2020, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 18, 2020, ch. 2020-48, L.O.F., and will become effective on October 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Department of Highway Safety and Motor Vehicles and E-mail Addresses

The Department of Highway Safety and Motor Vehicles (department) is the records custodian of motor vehicle records.⁵ Florida's motor vehicle records contain personal information such as a driver's social security number, driver license number, name, address, telephone number, and medical or disability information. The department is authorized to collect e-mail addresses and use e-mail, in lieu of the United States Postal Service, as a method of providing title certificate notifications,⁶ motor vehicle registration renewal notices,⁷ and driver license renewal notices.⁸

Public Record Exemption under Review

In 2015, the Legislature created a public record exemption for e-mail addresses collected by the department for the purpose of providing notification regarding title certificates, motor vehicle registration renewals, or driver license renewals.⁹ Such email addresses are exempt from public record requirements.¹⁰

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ Section 119.0712(2)(a), F.S., defines the term "motor vehicle record" to mean "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card" issued by the department.

⁶ Section 319.40(3), F.S.

⁷ Section 320.95(2), F.S.

⁸ Section 322.08(10), F.S.

⁹ Chapter 2015-32, L.O.F.; codified as s. 119.0712(2)(c), F.S.

¹⁰ 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. The School Board of Seminole*, 874 So.2d 48, 53 (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 1994);

The 2015 public necessity statement¹¹ for the exemption provides that:

[E]-mail addresses are unique to each individual and, when combined with other personal identifying information, can be used for identity theft, consumer scams, unwanted solicitations, or other invasive contacts. The public availability of personal e-mail addresses puts department customers at increased risk of these problems. Such risk may be significantly limited by permitting the department to keep customer e-mail addresses exempt. The Legislature finds that the risks to consumers outweigh the state's public policy favoring open government.¹²

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2020, unless reenacted by the Legislature.¹³

During the 2019 interim, subcommittee staff met with staff from the department to discuss the exemption. According to the department, it has collected 13 million e-mail addresses for both active and inactive drivers. As of August 6, 2019, the department had not received a public records request for the exempt information; however, the department recommends that the public record exemption be reenacted without changes to ensure consumer protection is maintained.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for e-mail addresses held by the department for the purpose of providing title certificate notifications, motor vehicle registration renewal notices, and driver license renewal notices. The bill also corrects a cross reference.¹⁴

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.

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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹¹ Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

¹² Section 2, ch. 2015-32, L.O.F.

¹³ Section 119.0712(2)(c), F.S.

¹⁴ In 2016, the Legislature enacted ch. 2016-242, L.O.F., which amended s. 322.08, F.S., and moved s. 322.08(9), F.S., to s. 322.08(10), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.