

**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 7004

INTRODUCER: Finance and Tax Committee

SUBJECT: OGSR/Taxpayer E-mail Addresses Held by a Tax Collector

DATE: February 3, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Babin</u>	<u>Diez-Arguelles</u>		<b>FT Submitted as Committee Bill</b>
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Babin</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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## I. Summary:

SB 7004 amends s. 197.3225, Florida Statutes, to save from repeal the current public records exemption for e-mail addresses used by a tax collector to send certain tax notices, by removing the scheduled October 2, 2020, repeal date.

The bill continues to exempt from public disclosure those taxpayer e-mail addresses held by a tax collector for the purposes of:

- Sending a quarterly tax notice for prepayment of estimated taxes pursuant to s. 197.222, F.S.;
- 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 pursuant to s. 197.343, F.S.; or
- Sending a tax notice to a designated third party, mortgagee, or vendee pursuant to s. 197.344(1), F.S.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2020.

## II. Present Situation:

### Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

### **Executive Agency Records – The Public Records Act**

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>10</sup> The exemption must state

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<sup>2</sup> *Id.*

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>5</sup> Section 119.01(1), F.S. 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.”

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “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.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>12</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>13</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</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>19</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>20</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>21</sup>

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<sup>11</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>12</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>13</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>14</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>15</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

<sup>21</sup> Section 119.15(6)(b)1., F.S.

- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>25</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>26</sup>

### Property Tax Notices

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.<sup>27</sup> The property appraiser annually determines the “just value”<sup>28</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's taxable value.<sup>29</sup>

Taxpayers receive certain notices at various stages of the property tax administration process. For example:

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<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>28</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art. VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>29</sup> See s. 192.001(2) and (16), F.S.

- In August of each year, property appraisers send each taxpayer a notice of proposed property taxes, alerting the taxpayer of the property appraiser's proposed assessment for the taxpayer's property and the resulting tax that could be due, depending upon the local governments' adopted budgets.<sup>30</sup>
- In November of each year, tax collectors send tax notices to each taxpayer, informing the taxpayer of the amount of taxes due.<sup>31</sup> Taxes are generally due by the following March 31. Upon request by a mortgagee who holds property tax payments in escrow, tax collectors send this tax notice to the mortgagee.<sup>32</sup>
- Tax collectors send notices by April 30 to each taxpayer who has not paid his or her tax bill, alerting the taxpayer that a tax certificate could be sold.<sup>33</sup>

Historically, tax notices have been sent to the taxpayer using postal mail.<sup>34</sup> In 2011, the Legislature authorized tax collectors, after taxpayer consent, to deliver certain tax notices via electronic means.<sup>35</sup> Often, e-mail is the electronic means used by tax collectors to send notices.

### **Public Records Exemption for E-Mail Addresses held by Tax Collectors for Certain Purposes**

In 2015, the Legislature created s. 197.3225, F.S., to exempt from disclosure e-mail addresses held by tax collectors for the following purposes:

- Sending a quarterly tax notice for prepayment of estimated taxes pursuant to section 197.222(3), F.S.;
- Obtaining a taxpayer's consent to electronically send the tax notice (the annual tax bill) described in section 197.322(3), F.S.;
- Sending an additional tax notice or delinquent tax notice (annual tax bill/delinquency notice) pursuant to section 197.343, F.S.;
- Sending a tax notice (the annual tax bill) to a designated third party, mortgagee, or vendee pursuant to section 197.344(1), F.S.

Section 197.3225(2), F.S., provides for repeal of the exemption pursuant to the Act on October 2, 2020, unless reviewed and saved from repeal by the Legislature. Chapter 2015-13, Laws of Florida, which created the exemption, provides a statement of public necessity.<sup>36</sup> The statement finds that, when combined with other personal identifying information, e-mail addresses can be used for identity theft, taxpayer scams, and other invasive contacts.

Tax collectors have indicated that they have received public records requests for e-mail addresses.<sup>37</sup>

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<sup>30</sup> Section 200.069, F.S.

<sup>31</sup> Section 197.322(3), F.S.

<sup>32</sup> Section 197.344(1)(b), F.S.

<sup>33</sup> Section 197.343(1), F.S.

<sup>34</sup> *See, e.g.*, ss. 200.069, F.S. (requiring the notice of proposed property taxes to be sent by first-class mail); and 197.322(3), F.S. (authorizing the tax notice notifying the taxpayer of the amount of taxes due to be sent by postal mail).

<sup>35</sup> *See generally* ch. 2011-151, Laws of Fla.

<sup>36</sup> Section 2, ch. 2015-13, Laws of Fla.

<sup>37</sup> *See, e.g.*, Questionnaire Response by Sarasota County Tax Collector's Office, June 2019 (on file with The Senate Committee on Finance and Tax.)

### III. Effect of Proposed Changes:

The bill saves from repeal the public records exemption in s. 197.3225, F.S., which exempts from public disclosure and inspection those e-mail addresses held by tax collectors for the purpose of sending certain tax notices to taxpayers. The bill continues the exemption from public disclosure by removing the repeal date.

The bill takes effect October 1, 2020.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### B. Public Records/Open Meetings Issues:

##### *Vote Requirement*

Article I, s. 24(c) of the State Constitution requires two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill continues a current public records exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

##### *Public Necessity Statement*

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues a current public records exemption without an expansion. Thus, a statement of public necessity is not required.

##### *Breadth of Exemption*

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the personal identifying information contained in a record held by a tax collector for certain purposes. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Governmental agencies will continue to incur costs related to the redaction of records in responding to public records requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends 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.