

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 7007 PCB OTM 20-03 OGSR/E-mail Addresses/Tax Notices
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 7004

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 7007 passed the House on March 10, 2020, as SB 7004.

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.

Tax collectors are charged with sending tax notifications to taxpayers. In 2011, tax collectors were granted authority to send certain notices electronically. Specifically, tax collectors may send e-mail notifications to taxpayers participating in the prepayment installment plan or to taxpayers that have consented to receiving e-mail notifications.

Current law provides a public record exemption for taxpayer e-mail addresses held by tax collectors for any of the following purposes:

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

The bill saves from repeal the public records 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 to the state or local governments.

The bill was approved by the Governor on September 4, 2020, ch. 2020-166, 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 a 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.

Florida County Tax Collectors

In Florida, tax collectors are constitutional officers duly elected from their counties of residence who deliver a myriad of services to include the collection of ad valorem and other taxes.⁵ Tax collectors, after local governments adopt millage rates, send annual property tax bills that are due and payable on November 1 of each year, or as soon as the certified tax roll is received.⁶ Within 20 working days of receipt of the certified ad valorem tax roll, the tax collector will mail each taxpayer a tax notice stating the amount due and advising the taxpayer of any discounts for early payment.⁷ Notice of the right to prepay taxes through participation in a prepayment installment plan will also be provided.⁸ If the taxpayer elects to participate in the prepayment installment plan, he or she will receive a discounted rate on his or her property taxes.⁹ The tax collector will send a quarterly tax notice with the discounted rates to all plan participants.¹⁰ Taxes are considered delinquent if they are not paid by April 1 following the year in which they are assessed.¹¹ By April 30, the tax collector will send an additional tax notice to each taxpayer whose payment has not been received notifying that taxpayer that a tax certificate on the property will be sold for delinquent taxes that are not paid in full.¹² Additionally, upon written request, a

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ Article VIII, s. 1(d), FLA. CONST.

⁶ Section 197.333, F.S.

⁷ Section 197.322(3), F.S.

⁸ Section 197.222(5), F.S.

⁹ Section 197.222(1), F.S.

¹⁰ Section 197.222(3), F.S.

¹¹ Section 197.333, F.S.

¹² Section 197.343(1), F.S.

tax notice will be sent to a third party designated by the taxpayer,¹³ or in specified circumstances, to a mortgagee¹⁴ or vendee.¹⁵

In 2011, tax collectors were given authority to send certain notices concerning the payment of taxes electronically.¹⁶ Tax collectors may send notices of taxation to taxpayers by e-mail if the taxpayer is a participant in a prepayment installment plan¹⁷ or if the tax collector has received express consent from the taxpayer to do so.¹⁸

Public Record Exemption under Review

In 2015, the Legislature created a public record exemption for taxpayer e-mail addresses held by tax collectors for any of the following purposes:¹⁹

- Obtaining a taxpayer's consent to send the tax notice described in s. 197.322(3), F.S.;
- Sending a quarterly tax notice for prepayment of estimated taxes to the tax payer pursuant to s. 197.222(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.

Such e-mail addresses are exempt²⁰ from public disclosure. E-mail addresses held by tax collectors for other purposes, however, are not exempt from public record requirements. As a result, if a tax collector holds an e-mail address for the above mentioned reasons 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.

The 2015 public necessity statement²¹ for the exemption provides that:

The Legislature finds that . . . [e-mail] addresses are unique to the individual and, when combined with other personal identifying information, can be used for identity theft, taxpayer scams, and other invasive contacts. The public availability of personal e-mail addresses invites and exacerbates thriving and well-documented criminal activities and puts taxpayers at increased risk of harm. Such harm would be significantly curtailed by allowing a tax collector to preserve the confidentiality of taxpayer e-mail addresses.²²

¹³ A taxpayer must be 60 years old or older to designate a third party to receive a tax notice. Section 197.344(1)(a), F.S.

¹⁴ The mortgagee, to receive a tax notice, must be a trustee of an escrow account for ad valorem taxes due on the property. Section 197.344(1)(b), F.S.

¹⁵ The vendee, to receive a tax notice, must be the vendee of an unrecorded or recorded contract for deed. Section 197.344(1)(c), F.S.

¹⁶ Chapter 2011-151, L.O.F.

¹⁷ Section 197.222(3), F.S.

¹⁸ Sections 197.322(3), 197.343, and 197.344(1), F.S.

¹⁹ Chapter 2015-13, L.O.F.; codified as s. 197.3225, F.S.

²⁰ There is a difference between records the Legislature designates 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); *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, Aug. 1, 1985).

²¹ Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

²² Section 2, ch. 2015-13, L.O.F.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2020, unless reenacted by the Legislature.²³

During the 2019 interim, subcommittee staff sent a questionnaire to the 67 Florida County Tax Collector Offices. Thirty-three of the offices responded to the questionnaire. A slight majority indicated that they currently use e-mail to provide at least one of the tax notices described in the exemption.²⁴ When asked whether the exemption should be repealed, reenacted as is, or reenacted with changes, a large majority of respondents indicated the exemption should be reenacted as is, with none indicating it should be repealed.²⁵ Three respondents recommended the exemption be expanded.²⁶ The respondents indicated that they believe the exemption protects taxpayers from fraud and encourages public participation in electronic billing.²⁷

Effects of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for taxpayer e-mail addresses held by tax collectors for certain tax notice purposes.

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.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

²³ Section 197.3225(2), F.S.

²⁴ Open Government Sunset Review Questionnaire, County Tax Collector Office Responses, July 18, 2019, through Aug. 15, 2019, on file with the House Oversight, Transparency & Public Management Subcommittee.

²⁵ *Id.*

²⁶ The three respondents that recommended the exemption be reenacted with changes were Manatee, Sarasota, and Sumter. The Manatee County Tax Collector's Office suggested that all taxpayer e-mail addresses held by tax collectors be exempt from public records requirements. The Sarasota County Tax Collector's Office suggested offering protections for local business tax notices. The Sumter County Tax Collector's Office suggested that email addresses provided by a taxpayer during the cashiering process should be exempt from public records requirements. *Id.*

²⁷ *Id.*

None.