

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB HWSS 15-02 Pub. Rec./ Email Addresses on Driver License and Motor Vehicle Record

**SPONSOR(S):** Highway & Waterway Safety Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Highway & Waterway Safety Subcommittee	13 Y, 0 N	Whittaker	Smith

### SUMMARY ANALYSIS

The bill creates a public records exemption for electronic mail addresses held by the Department of Highway Safety and Motor Vehicles for the purpose of conducting motor vehicle record and driver license transactions.

The department is currently authorized to collect electronic mail addresses and use electronic mail in lieu of the United States Postal Service for the purposes of issuing a certificate of title<sup>1</sup>, providing motor vehicle renewal notices<sup>2</sup>, and providing driver license renewal notices<sup>3</sup>.

The public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.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 bill has no fiscal impact on state funds.

The bill has an effective date of upon becoming law.

**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 new public record exemption; thus it requires a two-thirds vote for final passage.**

<sup>1</sup> s. 319.40(3), F.S.

<sup>2</sup> s. 320.95(2), F.S.

<sup>3</sup> s. 322.08(8), F.S.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED 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 119.071(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

##### Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) and (b) 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.<sup>4</sup>

The Open Government Sunset Review Act<sup>5</sup> 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:

- 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 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

##### Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.<sup>6</sup> If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.<sup>7</sup> Also, if the information is deemed to be confidential it may only be released to those persons and entities designated in the statute.<sup>8</sup> However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.<sup>9</sup>

#### **Effect of Proposed Changes**

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

<sup>5</sup> s. 119.15(6)(b), F.S.

<sup>6</sup> *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004)

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5<sup>th</sup> DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).

The bill creates a public records exemption for electronic mail addresses held by the Department of Highway Safety and Motor Vehicles for the purpose of conducting motor vehicle record and driver license transactions.

The department is currently authorized to collect electronic mail addresses and use electronic mail in lieu of the United States Postal Service for the purposes of issuing a certificate of title<sup>10</sup>, providing motor vehicle renewal notices<sup>11</sup>, and providing driver license renewal notices<sup>12</sup>.

The public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15 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.

#### B. SECTION DIRECTORY:

- Section 1 Amends s. 119.0712, F.S., creating a public records exemption for electronic mail addresses held by the Department of Highway Safety and Motor Vehicles for the purpose of conducting motor vehicle record and driver license transactions; providing for future legislative review and repeal of the exemption.
- Section 2 Provides a statement of public necessity.
- Section 3 Provides an effective date as upon becoming a law.

### 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:

None

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<sup>10</sup> s. 319.40(3), F.S.

<sup>11</sup> s. 320.95(2), F.S.

<sup>12</sup> s. 322.08(8), F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expand funds or to take action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

##### 2. Other:

###### 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 new public record exemption; 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 new public record exemption; 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 creates a public records exemption for electronic mail addresses held by the Department of Highway Safety and Motor Vehicles for the purpose of conducting motor vehicle record and driver license transactions.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None