

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTM 20-02 OGSR/Email Addresses/Department of Highway Safety and Motor Vehicles

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

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee		Villa	Smith

SUMMARY ANALYSIS

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 containing personal information about drivers and motor vehicle owners. The department is authorized to collect e-mail addresses and use e-mail in lieu of the United States Postal Service for the purpose of providing title certificate notifications, providing motor vehicle renewal notices, and providing driver license renewal notices.

Current law provides a public records exemption for e-mail addresses held by the department for the purpose of providing notifications and renewal notices.

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 on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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 which contain personal information about drivers and motor vehicle owners. 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 for the purpose of providing motor vehicle renewal notices,⁷ and for the purpose of providing driver license renewal notices.⁸

Public Record Exemption under Review

In 2015, the Legislature created a public record exemption for e-mail addresses held by the department for the purpose of providing notification regarding title certificates, motor vehicle registration renewals, or driver license renewals.⁹

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), 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 of Highway Safety and Motor Vehicles."

⁶ Section 319.40(3), F.S.

⁷ Section 320.95(2), F.S.

⁸ Section 322.08(10), F.S.

⁹ Section 119.0712(2)(c), F.S.

The 2015 public necessity statement¹⁰ for the exemption provides that:

The Legislature finds 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.¹¹

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

During the 2019 interim, subcommittee staff met with staff from the department to discuss the exemption. The department has collected 13 million e-mail addresses for both active and inactive drivers. As of August 6, 2019, the department has not received a public records request for the exempt information. The department recommends that the public records exemption be reenacted as is.

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, providing motor vehicle registration renewal notices, and providing driver license renewal notices.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0712, F.S., to save from repeal the public record exemption for certain e-mail addresses held by the department and corrects a cross reference.

Section 2 provides an effective date of October 1, 2020.

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:

¹⁰ Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

¹¹ Chapter 2015-32, L.O.F.

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to 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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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. However, the reference to that subsection in s. 119.0712(2)(c), F. S., was not amended to reflect this change.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.