

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.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 1030

INTRODUCER: Infrastructure and Security Committee and Senator Stargel

SUBJECT: Public Records/Vessel Title or Registration/Department of Highway Safety and Motor Vehicles

DATE: February 7, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1030 makes confidential and exempt from public disclosure personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the Department of Highway Safety and Motor Vehicles (DHSMV). This exemption applies to records held on or after the effective date of the bill.

Additionally, the bill makes exempt from public disclosure electronic mail addresses and cellular telephone numbers collected by the DHSMV or its agent tax collectors pursuant to chapters 319, 320, 322, 324 or 328, F.S. This exemption applies to electronic mail addresses and cellular telephone numbers held before, on or after the effective date of the bill.

The bill requires the DHSMV to disclose electronic mail addresses or cellular telephone numbers to its tax collector agents to send electronic communications for the purpose of providing information.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because the bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill may have a minimal negative fiscal impact on the governmental and private sector.

The bill takes effect on July 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.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ 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.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ 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.”⁷

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ 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)

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

⁵ 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.”

⁶ 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.”

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

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.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

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.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

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

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.¹⁴ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ 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.¹⁹

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *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).

¹² *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).

¹³ *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).

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

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

¹⁶ Section 119.15, F.S.

¹⁷ 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.

¹⁸ 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.

¹⁹ Section 119.15(3), F.S.

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.²⁰ 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;²¹
- 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;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ 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.²⁵ 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.²⁶

Driver Privacy Protection Act of 1994

Motorist personal information, when held by the DHSMV in motor vehicle records, is confidential pursuant to the Driver's Privacy Protection Act (DPPA) of 1994.²⁷ These restrictions on the disclosure of motorist personal information do not apply to vessel titles or vessel registrations. Because the personal information in vessel records comprises much of the same information contained in motor vehicle records, when personal information revealed in vessel

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), F.S.

records is made available to the public, the protections afforded by the DPPA are undermined, eroding the privacy of motorist personal information.²⁸

Personal information covered by the DPPA includes: access to your social security number, driver license or identification card number, name, address, telephone number and medical or disability information, contained in your motor vehicle and driver license records. Additionally, emergency contact information and email addresses are restricted pursuant to section 119.0712(2), F.S.²⁹

Non-personal information contained in motor vehicle and driver license records such as vehicular crash records, driving violations and driver status information are not covered under the DPPA, and are considered public information.³⁰

Personal information in motor vehicle and driver license records can be released for the following purposes:^{31, 32}

- For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions;
- For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers;
- For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only -
 - to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;
- For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court;
- For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals;

²⁸ See DHSMV Form 82040 (Rev. Nov. 2015), Application for Certificate of Title with/without Registration, available at <https://flhsmv.gov/pdf/forms/82040.pdf> (same form is used for titling of motor vehicles and vessels and includes various items of personal information).

²⁹ Florida Department of Highway Safety and Motor Vehicles, *Privacy Statement Driver Privacy Protection Act*, available at <https://www.flhsmv.gov/privacy-statement/driver-privacy-protection-act/> (last visited on January 16, 2020).

³⁰ *Id.*

³¹ *Supra*, note 27.

³² Florida Department of Highway Safety and Motor Vehicles forms HSMV 90511 (Revised 11/19) available at <https://www.flhsmv.gov/pdf/forms/90511.pdf> (last visited January 16, 2020) and HSMV 90510 (Revised 03/19) available at <https://www.flhsmv.gov/pdf/forms/90510.pdf> (last visited January 16, 2020).

- For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting;
- For use in providing notice to the owners of towed or impounded vehicles;
- For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection;
- For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license;
- For use in connection with the operation of private toll transportation facilities;
- For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains;
- For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains;
- For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains; and
- For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

III. Effect of Proposed Changes:

The bill makes confidential and exempt from public inspection and copying personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the DHSMV. This exemption applies to records held on or after the effective date of the exemption.

The bill exempts from public inspection and copying electronic mail addresses and cellular telephone numbers collected by the DHSMV or its agent tax collectors pursuant to chapter 319, chapter 320, chapter 322, chapter 324, or chapter 328. This exemption applies to electronic mail addresses and cellular telephone numbers held before, on or after the effective date of the bill.

The bill provides that the personal information in a vessel record may be released in the same manner provided for a motor vehicle record pursuant to the DPPA of 1994, 18 U.S.C. ss. 2721 et seq.

The bill requires the DHSMV to disclose electronic mail addresses or cellular telephone numbers to its tax collector agents to send electronic communications to such electronic mail addresses or cellular telephone numbers for the purpose of providing information about the issuance of titles, registrations, disabled parking permits, driver licenses, and identification cards; renewal notices; or the tax collector's office locations, hours of operation, contact information, driving skills testing locations, appointment scheduling information, or website information.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill contains a statement of public necessity, which includes:

- The Legislature finds that it is a public necessity that personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the DHSMV be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.
- Motorist personal information, when held by the DHSMV in motor vehicle records, is confidential pursuant to the DPPA and s. 119.0712(2), F.S. These restrictions on the disclosure of motorist personal information do not apply to vessel titles or vessel registrations. Because the personal information in vessel records comprises much of the same information contained in motor vehicle records, when personal information revealed in vessel records is made available to the public, the protections afforded by the DPPA are significantly undermined, eroding the privacy and safety of motorists. Thus, the Legislature finds that it is a public necessity to make personal information contained in such vessel records confidential and exempt from public records requirements.
- The Legislature finds that it is a public necessity that electronic mail addresses and cellular telephone numbers collected by the DHSMV and its tax collector agents pursuant to chapter 319, chapter 320, chapter 322, chapter 324, or chapter 328, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and section 24(a), Article I of the State Constitution.
- In order to communicate more effectively with motorists through enhancements in information technology, including efforts of the Motorist Modernization project, the DHSMV seeks to increase communications with motorists through electronic mail and text messaging.
- If the electronic mail addresses or cellular telephone numbers of motorists are made available to the public, the impact on motorist privacy and risk of unsolicited commercial solicitation by electronic mail or text message would have an undesirable chilling effect on motorists' voluntary use of electronic portals to communicate with the department, thereby undermining the effective use of these enhancements in information technology. Thus, the Legislature finds that it is a public necessity to make such electronic mail addresses and cellular telephone numbers collected by the DHSMV confidential and exempt from public records requirements.
- The Legislature further finds that the public record exemptions for electronic mail addresses and cellular telephone numbers must be given retroactive application because it is remedial in nature.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:***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 bill creating or expanding an exemption to the public records requirements. The bill enacts a new exemption for personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the DHSMV, and electronic mail addresses and cellular telephone numbers collected by the DHSMV or its agent tax collectors, thus, the bill requires a two-thirds vote to be enacted.

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. Section 2 of the CS contains a statement of public necessity for the exemption.

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 personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the DHSMV, and electronic mail addresses and cellular telephone numbers collected by the DHSMV or its agent tax collectors. This bill exempts only personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the DHSMV, and electronic mail addresses and cellular telephone numbers collected by the DHSMV or its agent tax collectors from the public records requirements. 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 be subject to the cost, to the extent imposed, associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The bill may have a minimal negative fiscal impact on DHSMV associated with complying with public records requests and performing any necessary redactions before releasing a record. However, the costs could be absorbed by the agencies as part of their day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently, the DHSMV is authorized to collect electronic mail addresses and to use them in lieu of the United States Postal Service to send customers notifications and receive applications for title certificates.³³ Senate bill 636 extends such authorization to DHSMV's authorized agents, namely local tax collectors. SB 636 authorizes DHSMV and its agents to collect cellular telephone numbers, and to use the email addresses and cellular telephone numbers for broader business purposes. The portion of the bill providing an exemption for cellular telephone numbers should be linked in effective date to SB 636. Otherwise the DHSMV and its agents will have a public records exemption beyond the reasonable public necessity.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.0712.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Infrastructure and Security on January 21, 2020:

- Changes the term “e-mail” to “electronic mail”; and
- Personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or vessel registration issued by the DHSMV before the effective date of the CS is not covered by the public records exemption.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³³ Sections 320.95, 322.08, 328.30, and 328.80, Florida Statutes.