

**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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development

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BILL: CS/SB 636

INTRODUCER: Infrastructure and Security Committee and Senator Stargel

SUBJECT: Department of Highway Safety and Motor Vehicles

DATE: February 12, 2020      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Wells</u>	<u>Hrdlicka</u>	<u>ATD</u>	<u>Pre-meeting</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 636 provides authority for the Department of Highway Safety and Motor Vehicles (DHSMV) and its agents (tax collectors) to collect and use electronic mail addresses and cellular telephone numbers to contact customers to provide information.

The bill corrects a reference to the Florida Fish and Wildlife Commission (FWC) as the entity eligible to accept applications by electronic or telephonic means for vessel registration and titling. The DHSMV is the entity responsible for such activity.

The bill provides that all records made or kept by the DHSMV for vessel registration are subject to inspection and copying as provided in ch. 119, F.S.

The bill has an effective date of July 1, 2020.

**II. Present Situation:**

**Collection and Use of Cellular Telephone Numbers**

The DHSMV lacks statutory authority to collect and use cellular telephone numbers as a method to communicate with customers in an expedited manner. Florida Statutes already allow for the collection of email addresses and the use of email, in lieu of the United State Postal Service (USPS), to provide renewal notices, including driver license renewal notices, registration renewal notices, and vessel registration renewal notices. However, current law does not allow the

e-mail to be used for other business purposes.<sup>1</sup> The DHSMV is not specifically authorized to collect or use a customer's cellular telephone number.<sup>2</sup>

### **Electronic or Telephonic Vessel Applications**

The DHSMV is solely responsible for titling and registering vessels under ch. 328, F.S. The DHSMV is authorized to accept applications by electronic or telephonic means under s. 328.30, F.S., for titling and registering vessels; however, s. 328.80, F.S., also authorizes the FWC to do the same. This inconsistency was the result of the passing of two laws in 1999 that amended the same statute.<sup>3</sup>

### **Public Record Law**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business. This 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.<sup>4</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>5</sup> Chapter 119, F.S., constitutes the main body of public records laws and is known as the Public Records Act.<sup>6</sup> The Public Records Act states that:

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>7</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>8</sup> The Florida Supreme

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<sup>1</sup> See ss. 319.40, 320.95, 322.08(10), 328.30, and 328.80, F.S.

<sup>2</sup> Department of Highway Safety and Motor Vehicles, *2020 Agency Legislative Bill Analysis SB 636* (January 13, 2020) (on file with the Senate Committee on Infrastructure and Security).

<sup>3</sup> In 1999, the Legislature transferred responsibility for the registration of vessels from the Department of Environmental Protection (DEP) to the DHSMV (ch. 99-289, L.O.F.). During the same 1999 Regular Session, the Legislature transferred various other duties of the DEP to the Fish and Wildlife Conservation Commission (FWC) (ch. 99-245, L.O.F.). Although the DHSMV is responsible for the titling and registration of vessels, s. 328.80, F.S., authorizes the FWC to accept applications by electronic or telephonic means under ch. 328, F.S., despite the FWC having no statutory authority to provide titling and registration services for vessels under ch. 328, F.S.

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

<sup>5</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public records pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

<sup>6</sup> Public records laws are found throughout the Florida Statutes.

<sup>7</sup> Section 119.01(1), F.S.

<sup>8</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." 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."

Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>9</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>10</sup>

### III. Effect of Proposed Changes:

The bill amends s. 319.40, F.S., (Section 1) to allow authorized agents of the DHSMV to collect and use email addresses for title certificates, including using email in lieu of the USPS as a method of notification. It further requires all email addresses to be mutually shared between the DHSMV and its authorized agents upon request. However, any notice regarding the potential forfeiture or foreclosure of an interest in property must still be sent via the USPS.

The bill amends ss. 320.95, 322.08, 328.30, and 328.80, F.S., (Sections 2, 3, 4, and 6) to allow the DHSMV or its authorized agents to collect email addresses or cellular telephone numbers. They may use email or text message to provide information to customers with a vessel title, vessel registration, motor vehicle license, driver license, or identification card. Information that may be provided via email or text message in lieu of the USP includes, but is not limited to, renewal notices, appointment scheduling information, tax collector office locations, hours of operation, contact information, driving skills testing locations, and website information. The bill further requires all email addresses to be mutually shared between the DHSMV and its authorized agents upon request.

The bill further amends s. 328.80, F.S., (Section 6) to correct reference to the DHSMV from the FWC as the entity eligible to accept applications by electronic or telephonic means for vessel registration and titling.

The bill amends s. 328.40, F.S., (Section 5) to provide that all records made or kept by the DHSMV for vessel registration are subject to inspection and copying as provided in ch. 119, F.S.

The bill has an effective date of July 1, 2020.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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<sup>9</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>10</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local governments may incur indeterminate expenditures relating to information technology programming costs should authorized agents of the DHSMV pursue collection of cellular telephone numbers.<sup>11</sup>

The DHSMV may incur minimum programming costs related to modifying existing systems to enable the capture of a cellular telephone number should the DHSMV pursue that activity.<sup>12</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 319.40, 320.95, 322.08, 328.30, 328.40, and 328.80.

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<sup>11</sup> Department of Highway Safety and Motor Vehicles, *2020 Agency Legislative Bill Analysis SB 636* (January 13, 2020) (on file with the Senate Committee on Infrastructure and Security).

<sup>12</sup> *Id.*

**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 “verified texting numbers” to “cellular telephone numbers”; and
- Replaces “all electronic mail addresses shall be made available to the department or its authorized agents upon request” with “all electronic mail addresses shall be mutually shared between the department and its authorized agents upon request.”

**B. Amendments:**

None.