

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 Infrastructure and Security

BILL: SB 636

INTRODUCER: Senator Stargel

SUBJECT: Department of Highway Safety and Motor Vehicles

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	Pre-meeting
2.			ATD	
3.			AP	

I. Summary:

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 verified texting numbers to contact customers for providing information other than renewal notifications.

The bill removes the Florida Fish and Wildlife Commission (FWC) as an entity eligible to accept applications by electronic or telephonic means for vessel registration and titling.

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

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 allows 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.^{1 2 3 4 5} The DHSMV is not specifically authorized to collect or use a customer's cellular telephone number.⁶

Electronic or Telephonic Vessel Applications

The DHSMV is responsible for titling and registering vessels under chapter 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 so. This inconsistency was the result of the passing of two laws in 1999 that amended the same section of statute.⁷

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.⁸ 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.⁹

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.¹⁰ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.¹¹ 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.¹²

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.¹³ The Florida Supreme

¹ Section 319.40, F.S.

² Section 320.95, F.S.

³ Section 322.08(10), F.S.

⁴ Section 328.30, F.S.

⁵ Section 328.80, F.S.

⁶ Highway Safety and Motor Vehicles, *Senate Bill 636 Bill Analysis* (January 13, 2020) (on file with the Senate Committee on Infrastructure and Security).

⁷ In 1999, the Legislature transferred responsibility for the registration of vessels from the Department of Environmental Protection ("DEP") to the DHMSV (Ch. 99-289, L.O.F.). During the same 1999 regular session, the Legislature transferred various other duties of 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 FWC to accept applications by electronic or telephonic means under chapter 328, despite FWC having no statutory authority to provide titling and registration services for vessels under chapter 328.

⁸ FLA. CONST., art. I, s. 24(a).

⁹ *Id.*

¹⁰ 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 pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

¹¹ Public records laws are found throughout the Florida Statutes.

¹² Section 119.01(1), F.S.

¹³ 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,

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.”¹⁴ A violation of the Public Records Act may result in civil or criminal liability.¹⁵

III. Effect of Proposed Changes:

The bill amends ss. 319.40, F.S., to allow authorized agents of the DHSMV to collect electronic mail addresses and use electronic mail for title certificates, including, but not limited to, use of electronic mail in lieu of the USPS as a method of notification. It further requires all electronic mail addresses to be made available to the DHSMV or its authorized agents upon request. However, any notice regarding the potential forfeiture or foreclosure of an interest in property must be sent via the USPS.

The bill amends ss. 320.95, 322.08, 328.30, and 328.80, F.S., to allow the DHSMV or its authorized agents to collect electronic mail addresses or verified texting numbers to contact customers for business reasons other than a vessel title, vessel registration, motor vehicle license, driver license and identification card renewal notice. They may use electronic mail or text messages in lieu of the USPS for the purpose of providing information, including, but not limited to, renewal notices, appointment scheduling information, tax collector office locations, hours of operation, contact information, driving skills testing locations, and website information. It further requires all electronic mail addresses to be made available to the DHSMV or its authorized agents upon request.

The bill further amends s. 328.80, F.S., to remove the FWC as an entity eligible to accept applications by electronic or telephonic means for vessel registration and titling.

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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.”

¹⁴ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹⁵ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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 verified texting numbers.¹⁶

The DHSMV may incur indeterminate programming costs related to modifying existing systems to enable the capture of a verified texting number should the DHSMV pursue that activity.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1030 creates public records exemptions for information similar to the information covered by this bill. SB 1030 uses different terminology to provide a public record exemptions for “e-mail addresses” and “cellular telephone numbers”. SB 636 uses the terminology “electronic mail addresses” and “verified texting numbers”.

¹⁶ *Supra*, note 6.

¹⁷ *Id.*

The DHSMV provided the following additional comments:¹⁸

- In the bill, lines 49-51 provide that “All electronic mail addresses shall be made available to the department or its authorized agents upon request.” This language appears to create a mandatory duty of every person or entity seeking titling services under Chapter 319 to provide an email address upon request If this was the intention, it is not clear what the legal remedy is if someone refuses to provide an email address (i.e. does the authorized agent of the DHSMV refuse to provide the titling services sought until an email address is provided?) or claims not to have an email address; and
- The bill authorizes the DHSMV and its authorized agents to collect and use “verified texting numbers” for various purposes related to motor vehicle titles, motor vehicle license plates, driver licenses, state identification cards, vessel registrations, and titling. However, the bill does not define the term “verified texting number.” The DHSMV recommends the bill define “verified texting number” or replace it with a simpler term, such as cellular telephone number.

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.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

¹⁸ *Id.*