

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 7029

Motor Vehicle Registration

SPONSOR(S): Full Appropriations Council on Education and Economic Development; Transportation & Economic Development Appropriations Committee; Roads, Bridges & Ports Policy Committee, Evers

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Roads, Bridges & Ports Policy Committee	18 Y, 1 N	Brown	Miller
1)	Transportation & Economic Development Appropriations Committee	14 Y, 0 N, As CS	Rayman	Creamer
2)	Full Appropriations Council on Education & Economic Development	15 Y, 0 N, As CS	Rayman	Martin
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill is the result of a proposed mediated settlement regarding *Mary Ann Collier, et al. v. Dickinson, et al.*, a pending lawsuit against the Department of Highway Safety and Motor Vehicles (DHSMV), and three current and former employees of the department. The lawsuit stems from Florida's release of certain driver's license information between 2000 and 2004, in violation of the federal Drivers' Privacy Protection Act.

The bill provides that any person who held a driver's license, identification card, or motor vehicle registration that was valid between June 1, 2000, and September 30, 2004, is eligible to receive a single \$1 credit on a new or renewed motor vehicle registration between July 1, 2009, and June 30, 2010. The bill recognizes the credits are authorized if the United States District Court for the Southern District of Florida grants an order approving the settlement agreement. Authority for the credit expires on July 1, 2011. Recipients may opt to return credits to the DHSMV.

The bill reenacts the DHSMV and deletes the Bureau of Motor Vehicle Inspections, an obsolete bureau of the DHSMV.

The Revenue Estimating Impact Conference held March 27, 2009, indicates the bill has a non-recurring, negative fiscal impact of \$9.4 million to the General Revenue Fund, and has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Drivers' Privacy Protection Act

Current Situation

The Drivers' Privacy Protection Act (DPPA)¹ requires all states to protect the privacy of personal information contained in an individual's motor vehicle record. This information includes the driver's name, address, phone number, Social Security number, driver identification number, photograph, height, weight, gender, age, certain medical or disability information, and in some states, fingerprints. It does not include information concerning a driver's traffic violations, license status, or accidents.

The Act has a number of exceptions. A driver's personal information may be obtained from a state's Department of Motor Vehicles for any federal, state or local agency use in carrying out its functions; for any state, federal or local proceeding if the proceeding involves a motor vehicle; for automobile and driver safety purposes, such as conducting recall of motor vehicles; and for use in market research activities. Personal data is also available to licensed private investigators.

The Act imposes criminal fines for non-compliance and grants individuals a private right of action including actual and punitive damages, as well as attorney's fees.

The DPPA limits the use of a driver's motor vehicle record to certain purposes. These purposes are defined in 18 U.S.C. § 2721:

- Legitimate government agency functions.
- Use in matters of motor vehicle safety, theft, emissions, product recalls.
- Motor vehicle market research and surveys.
- "Legitimate" business needs in transactions initiated by the individual to verify accuracy of personal information.
- Use in connection with a civil, criminal, administrative or arbitral proceeding.
- Research activities and statistical reports, so long as personal information is not disclosed or used to contact individuals.
- Insurance activities.

¹ 18 U.S.C. 2721, *et seq.* (Public Law 103-322). Information in this section was adopted from the Electronic Privacy Information Center's survey of DPPA issues, available online at: <http://epic.org/privacy/drivers/> (last visited February 25, 2009).

- Notice for towed or impounded vehicles.
- Use by licensed investigators or security service.
- Use by private toll transportation facilities.
- In response to requests for individual records if the state has obtained express consent from the individual.
- For bulk marketing distribution if the state has obtained express consent from the individual.
- Use by any requestor where the requestor can show written consent of the individual.
- For any other legitimate state use if it relates to motor vehicle or public safety.

If an individual has not given consent to the release of a motor vehicle record, the DPPA limits sharing of information once it is obtained. Information may only be shared with other approved users only for permitted uses. In addition, records must be kept of each additional disclosure identifying each person or entity that is receiving the disclosure and for what purpose. The disclosure records must be kept for a period of 5 years.

Florida Lawsuit

Mary Ann Collier, et al. v. Dickinson, et al., Case No. 04-21351-DV-JEM (S.D. Fla.), is a potential class action lawsuit originally filed on June 7, 2004. The suit names present and former employees of the Department of Highway Safety and Motor Vehicles (DHSMV) as defendants and alleges the continued disclosure of personal information maintained by DHSMV obtained from motor vehicle and driver license records in violation of the DPPA. DHSMV is represented by Chesterfield Smith, Senior Assistant Attorney General, and each of the three named defendants is represented by attorneys appointed through the Department of Financial Services, Division of Risk Management.

The Federal law was effective June 1, 2000. However, Florida statute was not amended to conform to the federal requirements until September 30, 2004, when s. 119.0712(2), F.S., was amended to mirror DPPA. The above legal action led to the 2004 change in Florida law.

The initial complaint demanded approximately \$39 billion in liquidated damages, \$2,500 per release of information. The parties engaged in three separate mediation sessions. The mediated agreement reached on June 5, 2008, provides that all motor vehicle registrants who are class members (all natural persons who had a valid driver license, identification card, or motor vehicle registration) would receive a \$1 credit on the renewal of their motor vehicle registration during the period of July 1, 2009, through June 30, 2010. The total amount of the credit would be approximately \$9.4 million.

There will also be equitable relief which includes changing the procedures of DHSMV regarding disclosure of personal information. DHSMV is required by the settlement agreement to maintain a website informing the public of their rights under DPPA.

In addition, the Division of Risk Management would pay each of the four named plaintiffs \$3,000 and attorneys' fees in the amount of \$2.85 million.

Proposed Changes

The bill provides that any person who held a driver's license, identification card, or motor vehicle registration that was valid between June 1, 2000, and September 30, 2004, is eligible to receive a single \$1 credit on a new or renewed motor vehicle registration between July 1, 2009, and June 30, 2010.

Section 320.08046, F.S., provides a \$1 surcharge on license taxes for all vehicles required to be registered in Florida. Of this \$1 surcharge, 58 percent is directed to the General Revenue Fund and 42 percent is directed to the Grants and Donations Trust Fund in the Department of Juvenile Justice, to fund community juvenile justice partnership grants. The bill identifies only the General Revenue Fund portion of this surcharge as the funding mechanism for the estimated \$9.4 million in revenue not collected as a result of the settlement. An eligible recipient may elect not to receive the \$1 credit. The bill recognizes the credits are authorized if the United States District Court for the Southern District of

Florida grants an order approving the settlement agreement. The provisions of the settlement explicitly expire on July 1, 2011.

Reenactment of the Department of Highway Safety and Motor Vehicles

Current Situation

Overview

Sections 11.901-11.920, F.S., the "Florida Government Accountability Act," creates an agency sunset review process to determine if a public need exists for the continuation of a state agency, its advisory committees, or its programs. The act requires each agency and related advisory councils to be reviewed by the Legislature according to a prescribed ten-year schedule. If the Legislature does not take action before the review date to reenact the agency or its advisory committees, the agency will continue to be subject to an annual sunset review until the Legislature enacts legislation relating to the agency's abolition, continuation, or reorganization.

Sunset Review Process

The act requires the appointment of a Joint Legislative Sunset Committee to oversee the review process, obtain public input, and make recommendations to abolish, continue, or reorganize the agency under review.

Two reports are required prior to an agency's review date:

- No later than 2 years preceding the year in which an agency and its advisory committees are scheduled to be reviewed, the agency must provide the Legislature with a preliminary report detailing its programs and activities. Upon receipt of the agency's report, the sunset review committees of the Senate and House of Representatives are required to conduct independent reviews of the agency and its advisory committees. The Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Auditor General are required to assist the Senate and House of Representatives in the review process.
- No later than March 1 of the year in which an agency is scheduled to be reviewed, the sunset committees of the Senate and House of Representatives are required to provide the President of the Senate and Speaker of the House of Representatives with recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees.

Recommendations

The Joint Legislative Sunset Committee, Senate Committee on Transportation and OPPAGA has prepared various reports and memorandums regarding the sunset review of DHSMV and its programs and activities since 2007. They are summarized in bullet format below with earliest date first.

OPPAGA - December 2007

- Retain the department.
- Entice tax collectors to provide additional driver's license services (also discussed as an option is contracting with private agents for these services).

Senate Committee on Transportation - February 2008

- Continue the department.
- Repeal the Florida At-Risk Driver Council.²
- Consider revising the department's budget structure in order to:
 - Finance the department's services primarily through general revenue funds.
 - Implement some or the entire department's proposed budget cuts.
 - Revise the budget programs and entities to align with the department's current organization structure.
- Consider amending current statutes in order to:
 - Adjust the driver's license and ID card fee structure to promote more tax collector participation in providing driver's license and ID card services.
 - Implement federal Real ID requirements.³
 - Support measures to improve customer service.
- Consider amending current statutes in order to:
 - Regularly review titling and registration fees.
 - Abolish the construction and inspection programs within the Mobile Home Compliance and Enforcement budget entity and consider transferring the remaining programs to the Department of Community Affairs. In the alternative, ensure this budget entity is self-sufficient to the maximum extent feasible.
- Abolish the auto manufacturer/dealer activities or transfer these activities to the Department of Agriculture and Consumer Services.
- Abolish 75⁴ vacant sworn law enforcement positions in the Florida Highway Patrol and consider limiting the Patrol's functions to the State Highway System and roads of small counties.
- Analyze data centers and administrative services of all state agencies to determine whether consolidation, transfer, or reorganization of these centers and services would provide a significant cost savings.⁵

Senate Committee on Transportation - September 2008.

- Retain the department.
- Repeal the obsolete Bureau of Motor Vehicle Inspection.
- Promote additional tax collector participation in providing driver's licenses and ID cards.

Joint Legislative Sunset Committee - March 2008.

- Retain the department.
- Transfer responsibilities for the federal mobile home inspection contract back to the federal Department of Housing and Urban Development with the department continuing to investigate consumer complaints and regulate mobile home installers.
- The Sunset Committee could not agree on adoption of competing recommendations requiring tax collectors to become the exclusive agents for issuing drivers licenses.

Proposed Changes

The bill reenacts the DHSMV and deletes the obsolete Bureau of Motor Vehicle Inspection.⁶

B. SECTION DIRECTORY:

² Repealed by SB 1992 (2008).

³ Some of these requirements were adopted by SB 1992 (2008) such as modification of acceptable documents for the issuance of ID cards and a requirement of proof of a residence address.

⁴ A number of FHP positions have in fact been eliminated since February 2008. The FHP currently has 131 vacant positions.

⁵ SB 1892 (2008) consolidated data centers of several state agencies.

⁶ Section 20.24(2), F.S.

- Section 1.** Providing for the implementation of a certain litigation settlement; providing eligibility and procedures to collect a credit on new or renewal registrations; providing a funding mechanism for the credit; requiring the credit amounts to be deducted from specified moneys deposited into the General Revenue Fund; authorizing recipients to return the credit; providing that the credits are contingent on court approval of a final settlement; and providing an expiration date;
- Section 2.** Reenacts and amends section 20.24, F.S., for the DHSMV and deletes the obsolete Bureau of Motor Vehicle Inspection;
- Section 3.** Provides reference to the surcharge on license tax; section 320.08046, F.S.; and
- Section 4.** Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will reduce the amount of revenue received from certain drivers when registering or renewing a motor vehicle in the State of Florida. The Revenue Estimating Impact Conference held March 27, 2009, indicates the bill has a non-recurring, negative fiscal impact of \$9.4 million.

The bill redirects revenue authorized in s. 320.08046, F.S., which is currently designated to the General Revenue Fund, to fund the \$1 credit to implement the litigation settlement provisions of *Collier v. Dickinson* for the period July 1, 2009, through June 30, 2010.

This will result in a non-recurring revenue loss to the General Revenue Fund for the credit amount. The department estimates approximately 9.4 million driver license/ID card holders and/or motor vehicle registrants would be eligible to receive the credit.

	<u>FY 09-10</u>	<u>FY 10-11</u>	<u>FY 11-12</u>
License Tax Surcharge	\$9.4	\$0	\$0

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Floridians holding a driver's license, identification card, or motor vehicle registration that was valid between June 1, 2000, and September 30, 2004, may elect to receive a \$1 reduction on a new or renewed motor vehicle registration between July 1, 2009, and June 30, 2010.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 4, 2009, the Roads, Bridges, and Ports Policy Committee adopted two amendments and reported the bill favorably.

- Amendment 1 clarifies that the revenue source for the credit, the \$1 surcharge on license taxes levied by s. 320.08046, F.S., is only be derived from the 58 percent of the surcharge that currently goes to the General Revenue Fund. The 42 percent of the surcharge that goes to the Department of Juvenile Justice is not a revenue source for the credit.
- Amendment 2 amends the bill to allow eligible recipients of the credit to return their credit to the department, if they so choose.

On March 19, 2009, the Transportation & Economic Development Appropriations Committee adopted one amendment and reported the bill favorably as a Committee Substitute.

- Amendment 1 recognizes the credits are authorized if the United States District Court for the Southern District of Florida grants an order approving the settlement agreement.

On March 30, 2009, the Full Appropriations Council on Education & Economic Development adopted one amendment and reported the bill favorably as a Council Substitute.

- Amendment 1 reenacts the DHSMV and deletes the obsolete Bureau of Motor Vehicle Inspection.