

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1055 Pub. Rec./Department of Highway Safety and Motor Vehicles  
**SPONSOR(S):** Brannan  
**TIED BILLS:** HB 1053 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	15 Y, 0 N	Roth	Vickers
2) Oversight, Transparency & Public Management Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Current law provides a public record exemption for personal information found in motor vehicle records, email addresses collected by the Department of Highway Safety and Motor Vehicles (DHSMV), and emergency contact information found in motor vehicle records.

The bill provides a public record exemption for personal information contained in any record that pertains to a vessel title or vessel registration issued by DHSMV. Such information in a vessel record may be released only in the same manner provided for a motor vehicle record pursuant to the federal Driver's Privacy Protection Act of 1994.

The bill provides that in addition to an exemption for e-mail addresses, DHSMV will exempt verified texting numbers collected by DHSMV. The bill defines "verified texting number" as "a telephone number verified as capable of receiving text messages." The bill authorizes DHSMV to disclose such e-mail addresses or verified texting numbers to a tax collector if, by interagency agreement, DHSMV authorizes the tax collector to send electronic communications to such e-mail addresses or verified texting numbers for certain purposes.

The bill provides that information received by DHSMV as a result of an investigation or examination is confidential and exempt from public record until the investigation or examination ceases to be active or until administrative action taken by DHSMV has concluded or been made part of any hearing or court proceeding. DHSMV may release information that is made confidential and exempt under this subsection in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

The above exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides three statements of public necessity as required by the Florida Constitution, stating that the public record exemptions are necessary.

The bill has no fiscal impact on state or local government.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands existing public record exemptions; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for exemption from public records requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.<sup>1</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>3</sup> In addition, the exemption 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; or
- Protect trade or business secrets.<sup>4</sup>

Pursuant to s. 119.15(3), F.S., a new public records exemption or substantial amendment of an existing public records exemption is repealed on October 2 of the fifth year following enactment, unless the Legislature reenacts the exemption.

###### Department of Highway Safety and Motor Vehicles Exemptions

Section 119.0712(2), F.S., provides exemptions from public record requirements for the Department of Highway Safety and Motor Vehicles (DHSMV). Current exemptions include:

- Personal information, including highly restricted personal information, contained in a motor vehicle record that is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.;
- E-mail addresses collected by DHSMV; and
- Emergency contact information contained in a motor vehicle record.<sup>5</sup>

The term "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by DHSMV.

Section 119.0712(2)(c), F.S., provides that the exemption for e-mail addresses collected by DHSMV is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand

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<sup>1</sup> Art. I, s. 24(c), Fla. Const.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Without the express consent of the person to whom such emergency contact information applies, the emergency contact information contained in a motor vehicle record may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency.

repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

### Driver's Privacy Protection Act

Congress enacted the federal Driver's Privacy Protection Act (DPPA) as part of the Violent Crime Control and Law Enforcement Act of 1994. DPPA prohibits the release and use of certain personal information from state motor vehicle records, and provides permissible uses and authorized disclosures of such information.<sup>6</sup> DPPA defines "personal information" as information that identifies an individual, including the individuals: photograph, social security number, driver identification number, name, address, telephone number, and medical or disability information.<sup>7</sup>

DPPA also defines "highly restricted personal information" as an individual's photograph or image, social security number, or medical or disability information.<sup>8</sup>

Section 119.0712(2), F.S., provides that "personal information," including "highly restricted personal information," contained in a motor vehicle record, as defined by DPPA, is confidential. This "personal information" may be released only as authorized by DPPA. Furthermore, emergency contact information, including emergency contact e-mail addresses, contained in a motor vehicle record is confidential and exempt from the state's public records laws.<sup>9</sup> Without the express consent to whom such emergency contact information applies, the information may be released only to law enforcement agencies to contact those listed in the event of an emergency.<sup>10</sup>

### House Bill 1053

House Bill 1053 is a comprehensive bill relating to DHSMV. Among other things, the bill authorizes DHSMV to exercise the power of subpoena and to administer oaths or affirmations, examine witnesses, require affidavits, take depositions, and compel the attendance of witnesses and the production of books, papers, documents, records, and other evidence. The subpoena is to be used for investigations or examinations conducted by DHSMV, and may be served by an authorized representative of DHSMV.

If a person refuses to obey the subpoena, DHSMV may petition a court in the county in which the person or business is located. The court may direct the person to obey the subpoena, and any court costs incurred by DHSMV in the process, must be paid by the subpoenaed person.

For the purpose of any investigation, examination, or proceeding initiated by DHSMV, the department may designate agents to serve subpoenas and other processes and administer oaths or affirmations. A witness subpoenaed under this section is entitled to witness fees as established in statute for a witness in a civil case.

Additionally, the bill amends ss. 319.40, 320.95, 322.08, 328.30, and 328.80, F.S., authorizing DHSMV to collect and use e-mail addresses to contact customers for business reasons other than vehicle registration, vessel registration and driver license renewal notices.

### **Proposed Changes**

The bill amends s. 119.0712(2), F.S., providing a public record exemption<sup>11</sup> for personal information, including highly restricted personal information, contained in any record that pertains to a vessel title or

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<sup>6</sup> 18 U.S.C. s. 2721.

<sup>7</sup> 18 U.S.C. s. 2725(3).

<sup>8</sup> 18 U.S.C. s. 2725(4).

<sup>9</sup> Section 119.0712(2)(c), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by

vessel registration issued by DHSMV. Such information in a vessel record may be released only in the same manner provided for a motor vehicle record pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq. The bill provides for the retroactive application of this provision. The bill provides that this paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill amends s. 119.0712(2), F.S., providing that in addition to an exemption for e-mail addresses, DHSMV will exempt verified texting numbers collected by DHSMV pursuant to Chapters 319, 320, 322, 324, or 328, F.S. The bill defines "verified texting number" as "a telephone number verified as capable of receiving text messages."

The bill amends s. 119.0712(2), F.S., authorizing DHSMV to disclose such e-mail addresses or verified texting numbers to a tax collector if, by interagency agreement, DHSMV authorizes the tax collector to send electronic communications to such e-mail addresses or verified texting numbers for the purpose of providing information about the issuance of titles, registrations, disabled parking permits, driver licenses and identification cards, or 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 provides that the exemption for email addresses and verified texting numbers is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill amends ss. 319.1414, 319.25, 320.861, and 322.71, F.S., and provides that information received by DHSMV as a result of an investigation or examination conducted pursuant to Chapters 319, 320, and 322, F.S., is confidential and exempt from public record until the investigation or examination ceases to be active or until administrative action taken by DHSMV has concluded or been made part of any hearing or court proceeding. DHSMV may release information that is made confidential and exempt in furtherance of its official duties and responsibilities or to another governmental agency in the furtherance of its official duties and responsibilities.

The bill provides that the changes enacted to ss. 319.1414, 319.25, 320.861, and 322.71, F.S., are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides three statements of public necessity as required by the Florida Constitution, stating that the public records exemptions are necessary for the following reasons:

Personal information in vessel records include much of the same information contained in motor vehicle records, which are currently exempt in Florida Statutes and are protected under the federal Driver's Privacy Protection Act of 1994. However, the restrictions on the disclosure of motorist personal information do not apply to vessel titles or registrations. If vessel records are made public, it will compromise the privacy and safety of vessel owners.

DHSMV is seeking to increase communications with motorists via e-mail and text messaging. If e-mail addresses and verified texting numbers of motor vehicle and vessel owners are made available to the public, the impact on motorist privacy and risk of unsolicited commercial solicitation by e-mail or text message would have an undesirable chilling effect on motorists' voluntary use of electronic portals to communicate with DHSMV. This will undermine the effective use of the enhancements in information technology made by DHSMV.

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the custodian of public records, to anyone other than the persons or entities specifically designated in statute. (See Attorney General Opinion 85-62, Aug. 1, 1985).

If information produced by a party in compliance with a subpoena were subject to disclosure, a chilling effect on compliance with DHSMV-issued subpoenas would result, and there would be a strong likelihood that parties would refuse to voluntarily comply with a DHSMV-issued subpoena if all records and testimony received would be subject to disclosure. The exemption from disclosure would only apply to information received by DHSMV in response to a subpoena issued pursuant to an investigation or examination. However, if information received by DHSMV is later released by the department in furtherance of its official duties and responsibilities or to another governmental agency in furtherance of its official duties and responsibilities, the exemption from disclosure would no longer apply to such information.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 119.0712, F.S., relating to executive branch agency-specific exemptions from inspection or copying of public records.

**Section 2:** Amends s. 319.1414, F.S., relating to investigations; examinations; subpoenas; hearings; witnesses.

**Section 3:** Amends s. 319.25, F.S., relating to cancellation of certificates; investigations; subpoenas and other process; oaths; rules.

**Section 4:** Amends s. 320.861, F.S., relating to investigations; subpoenas and other process; oaths; rules.

**Section 5:** Amends s. 322.71, F.S., relating to investigations; subpoenas and other process; oaths; rules.

**Section 6:** Provides a public necessity statement.

**Section 7:** The act shall take effect on the same date as HB 1053 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

## **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:**

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, section 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill expands existing public record exemptions, thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates and expands existing public record exemptions, thus, it includes public necessity statements.

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands existing public record exemptions only to the extent necessary to remain consistent with the original intent of the exemptions. As such, the exemptions do not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There appears to be a single public necessity statement justifying four exemptions in sections 2 – 5 of the bill. Article I, section 24(c) of the State Constitution states that each law shall state with specificity the public necessity justifying the exemption. The public necessity statement in section 6 of the bill, relating to DHSMV investigations, may not be specific enough pursuant to the Constitution.

The term “highly restricted personal information” is a term created in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.

The bill expands the e-mail address exemption in section 1 to include “verified texting numbers.”

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**