

**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 Committee on Infrastructure and Security

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BILL: SB 1030

INTRODUCER: Senator Stargel

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

DATE: January 17, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	<b>Pre-meeting</b>
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____

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**I. Summary:**

SB 1030 is a bill relating the Department of Highway Safety and Motor Vehicles (DHSMV), which contains public record exemptions 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
- E-mail addresses and cellular telephone numbers collected by the DHSMV or its agent tax collectors.

The bill requires the DHSMV to disclose e-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The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature.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 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 has an effective date of 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.<sup>1</sup> 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.<sup>2</sup>

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

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

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

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> 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)

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

<sup>5</sup> 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.”

<sup>6</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.”

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

custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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

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.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup>

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<sup>8</sup> Section 119.07(1)(a), F.S.

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

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> *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).

<sup>12</sup> *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).

<sup>13</sup> *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).

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

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

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

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

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

### **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.<sup>27</sup> 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 undermined, eroding the privacy of motorist personal information.

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<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> 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?

<sup>25</sup> See *generally* s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

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

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.<sup>28</sup>

Information that is not covered by the DPPA is non-personal information contained in motor vehicle and driver license records such as vehicular crash records, driving violations and driver status information, and are considered public information.<sup>29</sup>

Personal information in motor vehicle and driver license records can be released for the following purposes:<sup>30, 31</sup>

- 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;
- 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;

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<sup>28</sup> 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).

<sup>29</sup> *Id.*

<sup>30</sup> *Supra*, note 27.

<sup>31</sup> 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 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 amends s. 119.0712, F.S., creating public record exemptions 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. Personal information in a vessel record may be released only 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 exemption applies to vessel records held before, on, or after the effective date of the bill; and
- E-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. The exemption applies to e-mail addresses and cellular telephone numbers held before, on, or after the effective date of the bill.

The bill requires the DHSMV to disclose e-mail addresses or cellular telephone numbers to its tax collector agents to send electronic communications to such e-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 of 1994, 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), Florida Statutes. 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 of 1994, 18 U.S.C. ss. 2721 et seq., are significantly undermined, eroding the privacy and safety of motorists.

- 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 e-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 e-mail and text messaging.
- If the e-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 e-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.
- The Legislature finds that it is a public necessity to make such e-mail addresses and cellular telephone numbers collected by the DHSMV confidential and exempt from public records requirements.
- The Legislature further finds that these public record exemptions must be given retroactive application because it is remedial in nature.

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:**

###### **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. This 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 e-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 bill 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 e-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 e-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.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

SB 636 provides authority for collection of information similar to the information covered in this bill. SB 636 uses different terminology to provide authority for the DHSMV to collect and use “electronic mail addresses” and “verified texting numbers.” SB 1030 uses the terminology “e-mail addresses” and “cellular telephone numbers.”

**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.)

None.

**B. Amendments:**

None.