

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 Appropriations Subcommittee on Transportation, Tourism, and Economic Development

BILL: PCS/CS/SB 1086 (399798)

INTRODUCER: Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Infrastructure and Security Committee; and Senator Diaz

SUBJECT: Vehicle and Vessel Registration Data and Functionality

DATE: February 27, 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>Recommend: Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

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

I. Summary:

PCS/CS/SB 1086 requires the Department of Highway Safety and Motor Vehicles (DHSMV) to provide tax collectors and their approved vendors with access to data and interface functionality that other third parties receive from the DHSMV related to the registration of motor vehicles, mobile homes, and vessels. The access must only be used for purposes that fulfill the tax collector’s statutory duties under chs. 320 and 328, F.S. The bill requires the approved vendors to enter into memorandums of understanding with the DHSMV, which include protection of consumer privacy and data collection.

The bill authorizes a tax collector to determine additional service charges that a privately owned license plate agent may collect. Such additional service charges must be itemized and disclosed to the person paying the charges to the agent. The bill also requires the tax collector and its approved license plate agent to enter into a memorandum of understanding with the DHSMV regarding the use of the Florida Real Time Vehicle Information System.

The bill allows the use of fees collected to fund the costs of the Florida Real Time Vehicle Information System to be used for costs to integrate the system with technology systems provided by vendors contracted with the tax collector to provide services.

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

II. Present Situation:

Tax Collector Service Charges

County tax collector offices process registrations of motor vehicles, mobile homes, and vessels;¹ applications for title for motor vehicles, mobile homes, and vessels;² and issuance of driver licenses.³ The tax collectors are authorized to collect and retain a service charge to perform these duties.⁴ Additionally, a tax collector may impose an additional service charge of up to 50 cents on any transaction handled at a tax collector's branch office of processing applications for issuance or transfer of license plates, mobile home stickers, or validation stickers; duplicate issuance of a registration certificate;⁵ issuance of license plate validation stickers, vessel decals, and mobile home stickers from an automated vending facility or printer dispenser machine;⁶ applications for issuance, duplication, or transfer of any certificate of title of a motor vehicle or mobile home;⁷ applications for vessel registration.⁸

Although not specifically authorized in statute, with DHSMV approval some tax collectors use third party agents to conduct transactions on behalf of the tax collector.⁹ In certain counties, by ordinance of the county, these agents are authorized to collect an additional fee for services provided. These additional fees can range from \$2 to \$25 for services rendered.¹⁰ For example, Broward County's current ordinance allows a "private auto tag agency" to charge a fee for its services; the agency must post the fee schedule, approved by the board of county commissioners, for the information of its customers, which clearly identifies statutory fees, the agency's fees, and total fees that customer would pay.¹¹ Miami-Dade's current ordinance allows operators of private branch agencies or limited branch agencies to charge fees for services rendered, which are set forth in a fee schedule.¹² Both ordinances require a receipt to be provided to a customer that shows all the details of the transaction.

Florida Real Time Vehicle Information System

The DHSMV maintains the Florida Real Time Vehicle Information System (FRVIS) that facilitates the collection of taxes and fees for tags, titles, and registrations associated with motor

¹ Sections 320.03, 328.48, and 328.73, F.S.

² See ss. 319.23 and 328.01, F.S.

³ Chapter 2010-163, Laws of Florida, and s. 322.02(1), F.S.

⁴ See ss. 320.04, 319.32(2), and 328.72(7), F.S.

⁵ Section 320.04(1)(a), F.S.

⁶ Section 320.04(1)(b), F.S.

⁷ Section 319.(2)(a), F.S.

⁸ Section 328.48, F.S.

⁹ See Florida Senate, Committee on Transportation, *Services Provided by License Tag Agents*, Interim Project Report 2007-138, October 2006. References to such "agents" appear in ss. 320.03, 320.04(1)(b), and 328.15(1), F.S.

¹⁰ *Id.*

¹¹ Section 20-251 (*Fees generally; supplies of accountable items; taxes.*), Broward County, Code of Ordinances.

¹² Section 2-123 (*Fees, amounts, collection, disposition.*), Miami-Dade County, Code of Ordinances.

vehicles and vessels.¹³ The system provides real-time access to information related to the tags, titles, and registrations.

The FRVIS is composed of two processing environments. The first is a distributed environment that consists of the servers at local tax collector and tag agent offices that process tag, title, and registration transactions throughout the state. The second environment is the host portion that consists of the back-end processing that is conducted centrally at the DHSMV's primary data center.¹⁴

A fee of 50 cents is collected on every license registration and vessel decal registration sold, which revenue is used to cover the costs of the FRVIS.¹⁵ The fees are collected and deposited into the Highway Safety Operation Trust fund "to be used to exclusively fund the system."¹⁶ This includes purchasing system equipment and software, paying personnel associated with maintenance and programming, and paying the costs of networks used in tax collector offices, including ancillary technology to integrate FRVIS with other tax collection systems.¹⁷

According to the DHSMV, the FRVIS processed approximately 413.1 million transactions for the collection of approximately \$3.091 billion in revenue from taxes and fees associated with tags, titles, and registrations for motor vehicles and vessels during Fiscal Year 2018-2019, including amounts retained by local tax collector and tag agent offices.¹⁸ These funds, together with all other sources of the DHSMV's revenue, are distributed through the FRVIS to various state agencies, including the DHSMV, and non-state entities in accordance with governing Florida Statutes.

In addition to residential street addresses, the DHSMV is authorized to collect and store (in the FRVIS) e-mail addresses. E-mail addresses may be used, in lieu of the United States Postal Service, to provide certain renewal notices, including registration renewal notices, driver license renewal notices, and vessel registration renewal notices.¹⁹ Currently, s. 119.0712(2)(c), F.S., provides public records exemptions for email addresses collected by the DHSMV related to driver licenses, motor vehicle titles, motor vehicle registrations, and identification cards.²⁰

¹³ Florida Auditor General, Department of Highway Safety and Motor Vehicles, *Florida Real Time Vehicle Information System (FRVIS): Information Technology Operational Audit*, at 1, Report No. 2014-183 (April 2014), available at https://flauditor.gov/pages/pdf_files/2014-183.pdf (last visited February 16, 2020).

¹⁴ *Id.* at 1-2.

¹⁵ Section 320.03(5) and 328.73(3), F.S.

¹⁶ Section 320.03(5), F.S.

¹⁷ Section 320.03(5), F.S.

¹⁸ Email from Kevin Jacobs, Deputy Legislative Affairs Director, Department of Highway Safety and Motor Vehicles to staff of the Senate Infrastructure and Security Committee, *RE: FRVIS* (January 16, 2020) (on file with the Senate Infrastructure and Security Committee).

¹⁹ Sections 319.40, 320.95, 322.08(10), 328.30, and 328.80, F.S.

²⁰ *See* ss. 319.40, 320.95(2), and 322.08(9), F.S.

Registration Duties of Tax Collectors

Motor Vehicles

Tax collectors are authorized agents of the DHSMV that issue registration certificates, registration license plates, validation stickers, and mobile home stickers to applicants.²¹ The DHSMV may require each tax collector to give a bond, payable to the DHSMV, conditioned that the tax collector faithfully and truly perform the duties imposed upon him or her according to the requirements of law and the rules and regulations of the DHSMV.²² Each tax collector must keep a full and complete record and account of all validation stickers, mobile home stickers, or other property received from the DHSMV.²³

Vessels

Tax collectors must issue registration certificates and vessel numbers and decals to applicants, subject to the requirements of law and in accordance with the rules of the DHSMV.²⁴ Each tax collector must keep a full and complete record and account of all vessel decals or other property received from the DHSMV and must make prompt remittance of moneys collected at the times and in the manner prescribed by law.²⁵

Access to FRVIS and Protection of Personal Information

Local tax collector and tag agent offices throughout the state process tag, title, and registration transactions through the FRVIS.²⁶ The FRVIS is required to be installed in every tax collector's and license tag agent's office in accordance with a schedule established by the DHSMV in consultation with the tax collectors and contingent upon funds being made available for the system by the state.²⁷

Typically only agents of the DHSMV have access to the FRVIS. However, many tax collectors hire vendors or other third-parties to assist with providing online services, mailing information, processing payments, deploying kiosks, and performing other duties. The DHSMV states that when requested it provides access to data, both in real-time and through batch processes, to a tax collector's vendors for the purpose of providing support to the tax collector. The DHSMV provides tax collectors and the tax collectors' third-party agents with access to most, but not all, customer data available through the FRVIS through memorandums of understanding (MOU).²⁸ The MOU specifies how the data will be used and protected and ensures compliance with state and federal laws that protect personal identifying information.²⁹

²¹ Section 320.03(1), F.S.

²² Section 320.03(2), F.S.

²³ Section 320.03(3), F.S.

²⁴ Section 328.73(1), F.S.

²⁵ Section 328.73(2), F.S.

²⁶ *Id.* at 1-2.

²⁷ Section 320.03(4)(b), F.S.

²⁸ Department of Highway Safety and Motor Vehicles, *2020 Agency Legislative Bill Analysis SB 1086* (January 13, 2020) (on file with the Senate Committee on Infrastructure and Security).

²⁹ Personal information is protected by Florida law and the federal Driver's Privacy Protection Act (18 U.S.C. s. 2725). The federal law restricts public access to social security numbers, driver license or identification card numbers, names, addresses, telephone numbers, and medical or disability information contained in motor vehicle and driver license records. Department

The DHSMV “practices data minimization, which is the practice of providing personal information to agents and vendors only when it is directly relevant and necessary to accomplish a specified purpose. Once the specified purpose has been completed, the data is securely destroyed or otherwise rendered unreadable. Data minimization decreases risks of data loss and breaches.”³⁰

However, some tax collectors state that their ability to analyze data from the DHSMV is limited because they are unable to run searches on real-time bulk data in the FRVIS because they are only authorized to look up customer vehicle or vessel data individually in real-time data. Tax collectors must therefore run any bulk data searches on batched bulk data from the previous business day.³¹

III. Effect of Proposed Changes:

Additional Service Charges

The bill amends ss. 319.32, 320.04, and 328.72, F.S., to authorize a tax collector to determine additional services charges to be collected by privately owned license plate agents approved by the tax collector. The tax collector must do this “in exercising her or her authority to contract with a license plate agent.” This appears to be the only specific reference to such authority in Florida statutes.

The additional service charges must be itemized and disclosed to the person paying the service charges to the license plate agent. The bill does not specify which transactions may be subject to service charge, any limitations on the amount of such service charges per transaction, or the use and retention of such revenues.

The tax collector is required to enter into a contract with the license plate agent regarding the disclosure of the additional service charges; the bill does not require the contract to contain any other provisions, such as setting the additional service charge amounts.

Access to FRVIS

The bill amends s. 320.03(5), F.S., to requires each county tax collector and its approved license plate agent to enter into a memorandum of understanding with the DHSMV regarding use of FRVIS.

Other Tax Collection Systems

Under current law, the fee collected to fund the cost of the FRVIS can be used to pay the costs of networks *used in tax collectors offices*. These cost of networks used in tax collector offices

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 February 18, 2020).

³⁰ Department of Highway Safety and Motor Vehicles, *2020 Agency Legislative Bill Analysis SB 1086* (January 13, 2020) (on file with the Senate Committee on Infrastructure and Security).

³¹ Information on file with staff of the Senate Infrastructure and Security Committee.

include ancillary technology to integrate FRVIS with other tax collection systems. The bill amends ss. 320.03 and 328.73, F.S., to authorize “other tax collection systems” to include technology systems *provided by vendors* that contract with tax collectors to provide in-person and online transactions of motor vehicle and mobile home registration certificates, registration license plates, and validation stickers; and vessel registration certificates and vessel numbers and decals. However, the bill excludes electronic filing systems from inclusion as “other tax collection systems.”

It appears that the bill expands the use of the state revenues for use to pay the costs of networks used outside of tax collector offices by vendors of the tax collectors, possibly to integrate these private systems with FRVIS.

Access to Data and Functionality

The bill amends ss. 320.03 and 328.73, F.S., requiring the DHSMV, upon a tax collector’s request, to provide the tax collector and its approved vendors with access to the same data and interface functionality that other third parties receive from the DHSMV. The data and functionality must only be used for purposes of fulfilling the tax collector’s statutory duties under chs. 320 and 328, F.S.

Accessible information includes, but is not limited to, bulk data for vehicle and vessel registrations and the most current address information and email addresses of applicants. The department and each county tax collector’s approved vendor must enter into a memorandum of understanding, which includes protection of consumer privacy and data collection.

Effective Date

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.

D. State Tax or Fee Increases:

To the extent the bill authorizes the imposition of a fee for services by license plate agents of tax collectors while addressing other subjects, the bill may be unconstitutional as a violation the single-subject requirement for the imposition, authorization, or raising

of a state tax or fee under Article VII, Section 19 of the Florida Constitution. Under that section, a “state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject.” A “fee” is defined by the Florida Constitution to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”³²

E. Other Constitutional Issues:

The bill authorizes tax collectors to determine the application of additional service charges and the amount of any service charges that may be imposed that will be collected by private owned license plate agents. The bill *may* be interpreted to authorize tax collectors, either acting as agents of the DHSMV in such transactions or under their county powers, to make such determinations without guidance or limitation. The lack of guidance or limitation may raise a concern that the bill violates the nondelegation doctrine, which requires that “fundamental and primary policy decisions ... be made by members of the legislature who are elected to perform those tasks, and [that the] administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.”³³

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Estimated revenues from the collection of additional service charges is unknown at this time. The bill does not specify if the tax collector, the privately owned license plate agent, or both parties can retain the additional service charge. Currently, such charges vary from county to county, for those counties that allow an agent to conduct transactions and retain the revenues.

B. Private Sector Impact:

Vendors that contract with county tax collectors to provide services may benefit from the ability to collect additional service charges and be able to access data and interface functionality of FRVIS.

C. Government Sector Impact:

Tax collectors may see a positive indeterminate fiscal impact as a result of having real-time access to data and interface functionality, and this may result in provision of more efficient service to customers.

The DHSMV may incur indeterminate programming costs to implement data access and interface functionality for tax collectors and tax collector-approved vendors.³⁴

³² FLA. CONST. art. VII, s. 19(d)(1).

³³ *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla.1978).

³⁴ Department of Highway Safety and Motor Vehicles, *2020 Agency Legislative Bill Analysis SB 1086* (January 13, 2020) (on file with the Senate Infrastructure and Security Committee).

It is unknown if any funds will be expended to integrate FRVIS with technology systems provided by vendors contracted with tax collectors for services. The use of such revenues for this purpose is not required by the bill.

VI. Technical Deficiencies:

Line 152 references s. 320.95, F.S., while amending the statute related to vessel registrations in ch. 328, F.S. This reference should be changed to s. 328.30, F.S.

VII. Related Issues:

The bill adds the term “license plate agent” to the chapters of Florida statutes dealing with motor vehicle and mobile home titles, motor vehicle and mobile home registrations, and vessel registrations. The term is undefined, and use of the term in statutes dealing with titles and vessels may lead to some confusion.

The DHSMV provided the following comments regarding the bill as originally filed:³⁵

The DHSMV does not need any further statutory authority to provide data or functionality to tax collector agents or vendors.³⁶

The...bill is written broadly and requires the [DHSMV] to provide tax collectors, tax collector agents, and tax collector vendors with access to the same data and functionality that all other third parties receive from the [DHSMV] related to motor vehicle and vessel registration. The bill also requires the [DHSMV] to provide customers’ residential and email addresses to tax collectors and their approved agents and vendors, which is not something the [DHSMV] currently does. Based on the broad language of the bill, the [DHSMV] requests clarification of the following:

- 1) Would the personal identifying information (“PII”) provided to the agents and vendors of a specific tax collector be limited to data relating to customers residing in that tax collector’s county? For example, if an agent or vendor does business on behalf of the Leon County Tax Collector, would the [DHSMV] be required to provide the agent or vendor with the PII of citizens in other counties if requested?
- 2) Could the [DHSMV] continue the practice of data minimization with respect to providing PII to agents and vendors? In other words, could the [DHSMV] refuse to provide PII to a tax collector’s agent or vendor unless it is directly relevant and necessary to accomplish a specified purpose related to carrying out the statutorily mandated functions of the tax collector?
- 3) As a follow-up to question two above, could the [DHSMV] also limit the agent or vendor’s use of the data and functionality to services provided on behalf of the tax collector, or would the vendor be free to use the data or functionality for any lawful commercial purpose?
- 4) Could the [DHSMV] limit the data released based on a business use case provided by the tax collector?

³⁵ *Id.*

³⁶ Section 320.03(4), F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 319.32, 320.03, 320.04, 328.72, and 328.73.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

Recommended PCS/CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 25, 2020:

The committee substitute:

- Requires tax collectors who enter into contracts with license plate agents to determine additional services charges that will be collected by the agents for services provided and enter into a contract with such agents that about the disclosure of such charges.
- Authorizes use of fees collected to cover costs related to FRVIS to be used for costs of technology systems of tax collector vendors to integrate with FRVIS.
- Removes the requirement that the DHSMV provide “real-time” access to data and specifies that access must include the same “interface” functionality as FRVIS and includes “bulk data.”
- Limits access to the data and functionality only for the purposes of fulfilling the tax collector’s statutory duties under chs. 320 and 328, F.S.
- Prohibits the reselling or use of the data and functionality for other purposes.
- Requires the tax collector’s approved vendor to enter into a contract with the DHSMV.
- Requires tax collectors and their approved license plate agents to enter into a memorandum of understanding with the DHSMV regarding the use of the Florida Real Time Vehicle Information System.

CS by Infrastructure and Security on January 21, 2020:

- Removes the ability of the DHSMV to require a tax collector’s approved agent or vendor that requests real-time access to the DHSMV data to enter into a memorandum of understanding, which may not be more restrictive than any memorandum of understanding between the department and any other third-party vendor; and
- Requires the DHSMV to provide tax collectors acting on behalf of the DHSMV, and tax collector-approved agents and vendors, real-time access to both the same data and functionality that all other third parties receive from the department related to motor vehicle and mobile home registration certificates, registration license plates, validation stickers, and vessel registration certificates and vessel numbers and decals, including, but not limited to, the most current address information and electronic mail addresses of applicants.

B. Amendments:

None.

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