

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1315 Pub. Rec./Department of Highway Safety and Motor Vehicles

SPONSOR(S): Government Operations Subcommittee, LaMarca

TIED BILLS: HB 1313 **IDEN./SIM. BILLS:** CS/SB 1326

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N	Johnson	Keating
2) Government Operations Subcommittee	17 Y, 0 N, As CS	Roth	Smith
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Highway Safety and Motor Vehicles (DHSMV) is in the process of developing optional digital driver licenses and identification cards, known as Florida Smart ID. Customers can use the Smart ID to show proof of identity or age. The application may be downloaded and installed on a smart device. Once downloaded, a secure enrollment process occurs using DHSMV's Virtual Office website. DHSMV will validate identity and eligibility to activate the Smart ID for use on the device.

HB 1313 (2021), to which this bill is linked, requires the DHSMV to establish digital driver licenses and identification cards. That bill also creates statutory guidelines regarding the digital driver licenses and identification cards.

This bill, which is linked to the passage of HB 1313 (2021), creates a public record exemption for the following information held by DHSMV:

- Secure login credentials held by the DHSMV; and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal.

The bill provides that the exemption is retroactive and applies to records held by the department before, on, or after the effective date of the exemption.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date. The bill provides a public necessity statement as required by the Florida Constitution.

The bill may have a minimal fiscal impact on state government.

Article I, section 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 creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This 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 the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no broader than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which 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 Act⁴ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than 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.
- Protect trade or business secrets.⁵

The Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Digital Driver License

The Department of Highway Safety and Motor Vehicles (DHSMV) is in the process of developing a digital driver license and identification card known as the Florida Smart ID system (Smart ID). Smart ID has multiple interactions occurring between various system components, including a Credential Service Provider (CSP), the Smart ID device, and an associated Verifier device.

Customers can use the Smart ID to show proof of identity or age. The application may be downloaded and installed on a smart device. Once downloaded, a secure enrollment process occurs using DHSMV's Virtual Office website. DHSMV will validate identity and eligibility to activate the Smart ID for use on the device.

HB 1313 (2021), to which this bill is linked requires the DHSMV to establish digital driver licenses and identification cards. That bill also creates statutory guidelines regarding the digital driver licenses and identification cards.

Effect of the Bill

¹ Art. I, s. 24(c), FLA. CONST.

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ Art. I, s. 24(c), FLA. CONST.

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ S. 119.15(3), F.S.

The bill creates a public record exemption for certain information held by DHSMV. Specifically, the bill provides that the following information is exempt⁷ from public record requirements:

- Secure login credentials held by the DHSMV before, on, or after the effective date of the exemption; and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal.

The bill provides that the exemption is retroactive and applies to records held by the department before, on, or after the effective date of the exemption.

The bill defines the term “secure login credentials” as information held by DHSMV for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

The bill defines the term “public-facing portal” as a web portal or computer application accessible to the public over the Internet, whether through a mobile device, website, or other electronic means, which is established for administering ch. 319, F.S., (motor vehicle titling); ch. 320, F.S., (motor vehicle licenses); ch. 322, F.S., (driver licenses); ch. 328, F.S., (vessel registration or titling); or any other provision of law conferring duties upon DHSMV.

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The statement includes that:

- Safeguarding the integrity and accuracy of data systems maintained by DHSMV is of paramount public importance, as these systems comprise critical information related to driver licenses, state identification cards, motor vehicles and vessels, and Florida Highway Patrol law enforcement records and also comprise personal information restricted from public disclosure by the federal Driver Privacy Protection Act of 1994;⁸
- Accordingly, unauthorized access to those systems poses a serious threat to the integrity and accuracy of the data contained therein, and the unauthorized disclosure of personal information contained in those systems may subject users to identity theft, financial harm, or other adverse impacts.
- Development of information technology allows DHSMV to make secure transactions more readily available to the public through expanded use of online user accounts accessible over the Internet, including applications such as digital driver licenses, and the public release of secure login credentials, Internet protocol addresses, geolocation data, or other information which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal, would render these data systems vulnerable to unauthorized access.
- To safeguard user accounts from unauthorized access and avert the unauthorized disclosure of personal information, it is a public necessity that secure login credentials, Internet protocol addresses, geolocation data, and other certain information be made exempt from public records requirements and, without the public records exemption, the effective and efficient administration of user accounts would be hindered.

⁷ 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. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 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 the custodian of public records, to anyone other than the persons or entities specifically designated in statute. See *Op. Att’y Gen. Fla. 85-62* (1985).

⁸ 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), F.S.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

B. SECTION DIRECTORY:

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

Section 2 Provides a statement of public necessity.

Section 3 Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative fiscal impact to DHSMV to comply with public records requests and redact exempt information prior to releasing a record. Such costs, however, would be absorbed as part of the day-to-day responsibilities of the agency.

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 require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 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 creates new public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption and includes the required public necessity statement.

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for secure login credentials, Internet protocol addresses, and geolocation data held by DHSMV, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking, nor does it provide a grant of rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 30, 2021, the Government Operations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made a technical change to the definition of “secure login credentials” and more closely aligned the public necessity statement with the information that is being exempted.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.