

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1359 Pub. Rec./Department of Highway Safety and Motor Vehicles

**SPONSOR(S):** Brannan

**TIED BILLS:** CS/HB 1151 **IDEN./SIM. BILLS:** CS/SB 1502

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	Roth	Smith
3) Commerce Committee	22 Y, 0 N	Johnson	Hamon

### SUMMARY ANALYSIS

CS/HB 1151, to which this bill is linked, provides the Department of Highway Safety and Motor Vehicles (DHSMV) with investigative and subpoena power and the ability to administer oaths or affirmations, examine witnesses, require affidavits, take depositions, and compel the attendance of witnesses and the production of documents, records, and other evidence for use in conducting investigations or examinations.

This bill, which is linked to the passage of CS/HB 1151, creates four public records exemptions, each making confidential and exempt from public disclosure information received by DHSMV as part of its investigations or examinations of:

- Suspected violations by private rebuilt inspection providers, or any contract entered into thereunder by such a provider;
- Suspected violations of ch. 319, F.S., relating to motor vehicle titles, or any rule or order thereunder;
- Suspected violations of ch. 320, F.S., relating to motor vehicle registrations and motor vehicle dealer and manufacturer licensing, or any rule or order thereunder; and
- Suspected violations of ch. 322, F.S., relating to driver licenses and identification cards, or any rule or order thereunder.

The above exemptions shield investigative records until the investigation ceases to be active or administrative action taken by DHSMV has concluded or been made part of any hearing or court proceeding, after which the investigative records are no longer confidential and exempt.

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 statement of public necessity as required by the Florida Constitution.

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

The bill is effective upon the same date that CS/HB 1151 or similar legislation takes effect, if such legislation is adopted in the same legislative session or extension thereof and becomes a law.

**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.**

# 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.<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption<sup>2</sup> and must be no broader than necessary to accomplish its purpose.<sup>3</sup>

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 Act<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

##### DHSMV Investigative Authority

DHSMV has jurisdiction to administer multiple chapters of the Florida Statutes with various degrees of investigative authority. For example, DHSMV is required to cancel improperly issued certificates of title,<sup>7</sup> but does not appear to have the authority to investigate and examine violations related to motor vehicle titles.

While DHSMV has the authority to inspect books and records of motor vehicle manufacturers and dealers,<sup>8</sup> it does not appear to have the authority to investigate other violations of ch. 320, F.S., relating to motor vehicle dealers.

DHSMV also does not appear to have statutory authority to investigate persons suspected of violating ch. 322, F.S., relating to driver licenses.

CS/HB 1151, to which this bill is linked, provides DHSMV with investigative and subpoena power and the ability to administer oaths or affirmations, examine witnesses, require affidavits, take depositions,

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<sup>1</sup> Art. I, s. 24(c), FLA. CONST.

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

<sup>3</sup> Art. I, s. 24(c), FLA. CONST.

<sup>4</sup> S. 119.15, F.S.

<sup>5</sup> S. 119.15(6)(b), F.S.

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

<sup>7</sup> S. 319.25(1), F.S.

<sup>8</sup> S. 320.861, F.S.

and compel the attendance of witnesses and the production of documents, records, and other evidence for use in conducting investigations or examinations into:

- Authorized private rebuilt inspection providers;
- Persons suspected of violating or of having violated ch. 319, F.S., relating to motor vehicle title certificates;
- Persons suspected of violating or of having violated ch. 320, F.S., relating to motor vehicles manufacturers and distributors; and
- Persons suspected of violating or of having violated ch. 322, F.S., relating to driver licenses.

### **Effect of the Bill**

The bill creates public record exemptions for investigatory and examination information received by DHSMV as a result of an investigation or examination of:

- Suspected violations by private rebuilt inspection providers, or any contract entered into thereunder by such a provider;
- Suspected violations of ch. 319, F.S., relating to motor vehicle titles, or any rule or order thereunder;
- Suspected violations of ch. 320, F.S., relating to motor vehicle registrations and motor vehicle dealer and manufacturer licensing, or any rule or order thereunder; and
- Suspected violations of ch. 322, F.S., relating to driver licenses and identification cards, or any rule or order thereunder.

The bill provides that the investigatory and examination information is confidential and exempt<sup>9</sup> from public record requirements until the investigation or examination ceases to be active or administrative action taken by DHSMV has concluded or been made part of any hearing or court proceeding.

The bill authorizes DHSMV to release investigative records in furtherance of DHSMV's official duties and responsibilities or, if released to another governmental agency, in furtherance of that agency's official duties and responsibilities.

The bill contains a statement of public necessity, as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that the release of information received by DHSMV as a result of an investigation or examination of certain violations could obstruct or jeopardize the integrity of the investigation or examination and impair the ability of DHSMV to perform its official duties and carry out its responsibilities under these statutory provisions, thus it is a public necessity to make such information confidential and exempt from public records requirements.

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

The bill provides that it will become effective upon the same date that CS/HB 1151 or similar legislation takes effect, if such legislation is adopted in the same legislative session or extension thereof and becomes a law.

### **B. SECTION DIRECTORY:**

**Section 1** Amends s. 319.1414, F.S., relating to investigations; subpoenas and other process; oaths; rules.

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<sup>9</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. 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).

**Section 2** Amends s. 319.25, F.S., relating to cancellation of certificates; investigations; subpoenas and other process; oaths; rules.

**Section 3** Amends s. 320.861, F.S., relating to investigations, subpoenas and other process; oaths; rules.

**Section 4** Amends s. 322.71, F.S., relating to investigations; subpoenas and other process; oaths; rules.

**Section 5** Provides a statement of public necessity.

**Section 6** 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 an insignificant fiscal impact on 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 impact county or municipal governments.

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 new public record exemptions 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 public record exemptions for certain investigative or examination information, which does not appear to be broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.