

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

SPONSOR(S): Brannan and others

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

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 1359 passed the House on April 14, 2021, as amended, and subsequently passed the Senate on April 26, 2021. CS/HB 1151 passed the House on April 14, 2021, as SB 1134, as amended.

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 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 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 was approved by the Governor on June 29, 2021, ch. 2021-237, L.O.F., and became effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

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,⁷ 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,⁸ 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,

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.

⁷ S. 319.25(1), F.S.

⁸ 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 exempt⁹ 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 legislation¹⁰ takes effect, if such legislation is adopted in the same legislative session or extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁹ 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).

¹⁰ CS/HB 1151 is the House Companion to SB 1134.

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.