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 Committee on Appropriations

BILL:	SB 1292
INTRODUCER:	Senator Collins
SUBJECT:	Public Records/E-mail Addresses/DHSMV
DATE:	April 16, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shutes	Vickers	TR	**Favorable**
2.	Khan	Khan	FT	**Favorable**
3.	Khan	Sadberry	AP	**Pre-meeting**

I. Summary:

SB 1292 expands the exemption from public records for email addresses collected by the Department of Highway Safety and Motor Vehicles (DHSMV) for certain renewal notices to include email addresses to be used as a method of general notification to customers. The bill also creates a public record exemption for email addresses collected by the DHSMV and used for purposes of renewal notices for vessel titles and liens.

A public necessity statement is included in the bill as required by the Florida Constitution.

The bill is subject to the Open Government Sunset Review Act and the new exemptions will be repealed on October 2, 2030, unless reviewed and reenacted by the Legislature.

Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each chamber of the Legislature is required for passage.

The bill takes effect on the same date that SB 1290 or similar legislation takes effect (July 1, 2025), if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The bill has no fiscal impact on state resources or expenditures. **See Section V. Fiscal Impact Statement.**

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.[1] 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.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, 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 chamber of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 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.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] 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."[7]

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

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate* (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives* (2020-2022)
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] 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."
[6] 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."
[7] *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

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.[10] 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.[11]

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

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.[14] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[15]

Open Government Sunset Review Act

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

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.[20]

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[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *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).
[12] *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).
[13] *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).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] 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.
[18] 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.
[19] Section 119.15(3), F.S.
[20] 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;[21]
- 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;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

The Act also requires specified questions to be considered during the review process.[24] In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] 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.[26]

Existing Public Record Exemptions for DHSMV-Related Email Addresses

Section 119.0712(2)(c), F.S., provides that email addresses collected by DHSMV pursuant to specified provisions of law are exempt from public disclosure. Specifically, the following types of transactions are exempt:

- Motor vehicle title notifications.[27]
- Motor vehicle registration renewals.[28]
- Driver license renewal notices.[29]

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[21] Section 119.15(6)(b)1., F.S.
[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] 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?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] Section 319.40(3), F.S.
[28] Section 320.95(2), F.S.
[29] Section 322.08(10), F.S.

SB 1290 – Department of Highways Safety and Motor Vehicles

SB 1290 expands the circumstances in which email may be used in lieu of the United States Postal Service by authorizing email to be used as method of notification for various notices and orders issued by DHSMV, including but not limited to, notices and orders related to driver licenses, identification cards, motor vehicle registrations, motor vehicle insurance and vessel titles.

III. Effect of Proposed Changes:

The bill amends s. 119.0712, F.S., to expand the exemption from public records for email addresses collected by DHSMV for providing renewal notices to include email addresses to be used as a method of general notification, and not just renewal notices. The bill also creates a public records exemption for email addresses collected by DHSMV and used for the purpose of providing renewal notices for vessel titles.

The bill is subject to the Open Government Sunset Review Act and the exemptions will be repealed on October 2, 2030, unless reviewed and reenacted by the Legislature. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each chamber of the Legislature is required for passage.

The bill contains a public necessity statement as required by the Florida Constitution. It provides that the Legislature finds that:

- It is a public necessity that e-mail addresses collected by the Department of Highway Safety and Motor Vehicles for the use of e-mail in lieu of the United States Postal Service as a method of notification be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Sections 320.95(2) and 322.08(10), Florida Statutes, authorize the department to collect e-mail addresses and use e-mail in lieu of the United States Postal Service to provide renewal notices related to motor vehicle license plates, driver licenses, and identification cards. The department is also authorized to collect e-mail addresses and use e-mail to provide renewal notices related to vessel registrations pursuant to s. 328.30(3), Florida Statutes.
- SB 1290 expands the circumstances in which e-mail may be used in lieu of the United States Postal Service by authorizing e-mail to be used as a method of general notification for various notices and orders issued by the department in addition to renewal notices, including, but not limited to, notices related to driver licenses, identification cards, motor vehicle registrations, vessel registrations, and orders to revoke, cancel, or suspend driver licenses.
- The department's use of e-mail as a method for corresponding with customers has steadily increased in recent decades. E-mail addresses are unique to each individual and, when combined with other personal identifying information, can be used for identity theft, consumer scams, unwanted solicitations, or other invasive contacts. The public availability of personal e-mail addresses puts the department's customers at increased risk of these problems. Such risks may be significantly limited by permitting the department to keep customer e-mail addresses exempt. The Legislature finds that these risks to consumers outweigh the state's public policy favoring open government.

The bill is effective on the same date that SB 1290 or similar legislation takes effect (July 1, 2025), if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not 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. Therefore, the bill may not be subject to Article VII, s. 18 of the Florida Constitution.

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 expands the exemption from public records for email addresses collected by DHSMV for providing renewal notices to include email addresses to be used as a method of general notification. The bill also creates a public records exemption for email addresses collected by DHSMV and used for the purpose of providing renewal notices for vessel titles. 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 email addresses held by the DHSMV for purposes of providing various general notifications, notices, orders and instructions to customers. This bill exempts only that specific information. 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:

Not applicable. The bill does not impose or raise a state tax or fee nor repeal a state tax credit or exemption. Therefore, this bill may not be a subject to Article VII, s. 19 of the Florida Constitution.

E. Other Constitutional Issues:

None identified.

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:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.0712 of the Florida Statutes.

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.