

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7079 PCB GAP 10-06 OGSR/Voter Information

SPONSOR(S): Governmental Affairs Policy Committee and Frishe

TIED BILLS: **IDEN./SIM. BILLS:** SB 2188

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee	11 Y, 0 N	Williamson	Williamson
1)	_____	_____	_____	_____
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Florida residents can register to vote by mailing or hand delivering a voter registration application to various locations. In addition to the applicant's name, the voter application requests, in part, the following: date of birth, name and address where last registered to vote, last four digits of the social security number, Florida driver's license number or identification number from a Florida issued ID card, and signature of the applicant.

Current law provides a public record exemption for the following information held by an agency:

- All declinations to register to vote at a voter registration agency or driver license office.
- Information relating to the place where a person registered to vote or updated a voter registration.
- The social security number, driver's license number, and Florida ID number of a voter registration applicant or voter.

Further, the law provides that the signature of a voter or voter registration applicant is exempt from the copying requirements found in the public records laws.

The bill reenacts the public record exemptions, which will repeal on October 2, 2010, if this bill does not become law. It also makes clarifying changes.

The bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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 is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Voter Registration in Florida

Florida residents can register to vote by mailing or hand delivering a voter registration application to various locations, including the office of the voter's supervisor of elections, the Division of Elections

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

within the Department of State, a driver license office, a voter registration agency,⁴ or an armed forces recruitment office.⁵ In addition to the applicant's name, the voter application requests, in part, the following: date of birth, address and county of legal residence, mailing address if different, race or ethnicity, state or country of birth, sex, party affiliation, whether the applicant needs assistance in voting, name and address where last registered, last four digits of the social security number, Florida driver's license number or identification number from a Florida issued ID card, and signature of the applicant.⁶

Florida Voter Registration System

The Florida Voter Registration System (FVRS) contains the official registration information of every legally registered voter in the State. There are at least 11.2 million active registered voters. Since its implementation in January 2006, the FVRS is considered one of the most comprehensive statewide databases. It includes, but is not limited to, the voter's name, date of birth, former and maiden names, addresses, social security number, driver's license number or state identification number, signature, and information as to where a person registered to vote or updated his or her registration record. Under Florida's public records laws, all of this electronic information is a public record with the exception of that information made confidential and exempt.⁷

Public Record Exemptions under Review

Prior to 2005, current law provided a public record exemption for declinations to register to vote at a voter registration agency and the location where a person registered or updated a voter registration.⁸ Use of the declination was limited to voter registration purposes, as required by federal law.

The exemption also provided that a voter's signature, social security number, and telephone number were exempt from the copying requirements of the Public Records Act⁹ and s. 24(a), Art. I of the State Constitution; however, such information was subject to public inspection.¹⁰

In 2005, the public record exemption was amended and, as such, currently provides that the following information held by an agency¹¹ is confidential and exempt¹² from public records requirements and may be used only for voter registration purposes:

- All declinations to register to vote at a voter registration agency or driver license office.
- Information relating to the place where a person registered to vote or updated a voter registration.
- The social security number, driver's license number, and Florida ID number of a voter registration applicant or voter.¹³

⁴ Section 97.021(40), F.S., defines "voter registration agency" to mean "any office that provides public assistance, any office that serves persons with disabilities, any center for independent living, or any public library."

⁵ Section 97.053(1), F.S.

⁶ See s. 97.052(2)(a) – (t), F.S.

⁷ Email from Maria Matthews, Assistant General Counsel for the Department of State, August 11, 2009 (on file with the Governmental Affairs Policy Committee).

⁸ Section 97.0585, F.S. (2004)

⁹ Chapter 119, F.S., often is referred to as the Public Records Act.

¹⁰ Section 97.0585, F.S. (2004)

¹¹ Section 119.011(2), F.S., defines "agency" to mean "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."

¹² There is a difference between records the Legislature designates as 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. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 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 the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹³ Section 97.0585(1)(a) – (c), F.S.

Further, the section provides that the signature of a voter or voter registration applicant is exempt from the copying requirements found in the public records laws.¹⁴

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.¹⁵

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record exemptions. It also makes clarifying changes.

B. SECTION DIRECTORY:

Section 1 amends s. 97.0585, F.S., to reenact the public record exemptions for information regarding voters and voter applicants.

Section 2 repeals s. 3 of chapter 2005-279, L.O.F., which provides for repeal of the exemptions.

Section 3 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

¹⁴ Section 97.0585(2), F.S.

¹⁵ Section 3 of chapter 2005-279, L.O.F.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments by the Department of State¹⁶

Declinations to Register to Vote and Information Relating to the Place of Registration

The public record exemption for declinations to register to vote flows from the National Voter Registration Act of 1993 (NVRA). One of the primary goals of the NVRA was to make it easier to register and to maintain one's registration record. This was accomplished in part by designating the driver license examiner offices and other governmental agencies or offices as voter registration agencies. That means those agencies have to provide simultaneous voter registration services in conjunction with their own agency services. Consequently, a person was no longer limited to submitting his or her registration application to a supervisor of elections office.

Some of the offices designated included offices that served persons with disabilities or offices that provided public assistance. In order to encourage registration and minimize any disincentive to registering at these sites, the federal law prohibited the disclosure of the location where someone registered or updated his or her registration information so as not to reveal whether someone was applying for or receiving public assistance.

Congress also wanted to monitor the effectiveness of the NVRA without revealing whether or not someone decided to register or update his or her voter record. Once again, the objective was to remove any disincentives from registering.

The reasons for the public record exemption for declinations to register to vote and location of registration, under federal law, still apply and, as such, protection should be continued at the state level.

Social Security Number, Driver's License Number, and Florida ID number

The public record exemption for the social security, driver's license, or Florida identification number of a voter registration applicant or voter flows from a requirement in the Help America Vote Act and under section 97.053(5), F.S., in which a person must provide a personal identifying number in order to register to vote. The personal identifying number is then confirmed or verified against databases at the Florida Department of Highway Safety and Motor Vehicles (DHSMV) or the Social Security Administration for identification purposes.¹⁷

The Department of State believes disclosure of such numbers in conjunction with other readily available and easily accessible public information, including information contained in the FVRS, could be used to facilitate identity theft, serve illegitimate uses, and pose economic and personal harm.

The Department believes the exemption under review affords greater protection of an applicant's or voter's social security number than is afforded under the Federal Privacy Act and the general exemption for social security numbers¹⁸ found in the Public Records Act. Unlike the general public record exemption found in the Public Records Act, the public record exemption specific to the social

¹⁶ Comments were provided by email from Maria Matthews, Assistant General Counsel for the Department of State, August 11, 2009 (on file with the Governmental Affairs Policy Committee).

¹⁷ Such as verifying that the person signing the application is who he or she says he or she is on the application.

¹⁸ See s. 119.071(5)(a), F.S., providing a public record exemption for social security numbers held by an agency. Access is provided to certain agencies and individuals, including a business with a legitimate business purpose.

security number of an applicant or voter denies access to any requestor. No exceptions apply. The information may only be used for voter registration purposes.

In addition, both federal and state laws limit the disclosure of driver's license numbers in a "motor vehicle record."¹⁹ However, the voter registration application is not a part of the motor vehicle record even though the DHSMV transfers information regarding the driver's license or state identification card number and other data from the license application to the voter registration application as part of its simultaneous electronic intake for voter registration. Therefore, the protections in federal law and the Public Records Act would not protect those numbers from disclosure.

As such, the Department of State would like to maintain those protections provided in s. 97.0585, F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

¹⁹ See s. 119.0712, F.S., which provides that a driver's license number is confidential as provided in the Federal Driver's Privacy Protection Act (DPPA).