

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 Ethics and Elections Committee

BILL: CS/SB 2188

INTRODUCER: Ethics and Elections Committee

SUBJECT: Public records; voters and voter registration

DATE: March 19, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	Fav/CS
2.			GO	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 2188 reenacts public records exemptions protecting the confidentiality of certain private information relating to voters and voter registration, specifically:

- Declinations to register to vote;
- The location where a person registered or updated a voter registration;
- Social security numbers (“SSN”), drivers’ license numbers, and Florida identification (“ID”) numbers; and,
- Signatures (exemption limited to copying).

The bill also creates a renewable, 2-year exemption from the public election records for the name, address, and telephone number of a stalking victim, or someone living with a stalking victim, upon the filing of a prescribed sworn statement.

The bill amends section 97.0585 of the Florida Statutes, and saves the *current* provisions of that section from automatic repeal under Florida’s Open Government Sunset Review Act.

II. Present Situation:

Open Government Sunset Review

The bill adopts the Ethics and Elections committee staff's recommendations in Senate Interim Report 2010-215, entitled *Open Government Sunset Review of Section 97.0585, F.S., Voters and Voter Registration Confidentiality of Information* (October 2009). More extensive background information on Florida's Public Records law, the Open Government Sunset Review Act, and the specific elections issues surrounding section 97.0585, F.S., is contained in the Report at: http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-215ee.pdf.

Prior to 2005, section 97.0585, F.S., made confidential and exempt from public records disclosure "declinations to register to vote" at a voter registration agency and the location where a person registered or updated a voter registration.¹ It also exempted, for purposes of *copying only*, a voter's signature, SSN, and telephone number: those items were subject to public inspection.² Finally, it limited the use of declinations to "voter registration purposes," as required by federal law.³

In 2005, the Legislature amended section 97.0585, F.S.⁴ It currently provides that the following information held by an agency is *confidential and exempt* from public records disclosure, and used only for voter registration purposes:

- All **declinations** to register to vote at a voter registration agency or driver's license office.
- Information relating to where a person **registered** or **updated** a voter registration.
- A voter or voter registration applicant's **SSN, drivers' license number, and Florida ID number**.

Further, the section provides that a voter or voter registration applicant's **signature may not be copied**, and is exempt from public records law for that limited purpose.⁵ The exemptions in section 97.0585, F.S., are subject to the Open Government Sunset Review Act of 1995, in accordance with s. 119.15, F.S., and will be repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

¹ § 97.0585, F.S. (2004).

² *Id.*

³ § 97.0585(1), F.S. (2004); *see infra* fn. 35 (discussing federal National Voter Registration Act ("NVRA") confidentiality requirements). Federal law also limits to voter registration purposes the use of information on where a voter *registered* to vote, although the Florida statute did not reflect this requirement in 2005. *Id.*; *see* § 97.0585(1), F.S. (2004)

⁴ Ch. 2005-279, LAWS OF FLA., § 1, at 2738-39.

⁵ §97.0585(2), F.S.

Election-Records Protection for Stalking Victims

Florida public records law contains a *general exemption* for victims of “aggravated stalking” and “harassment;”⁶ there is no exemption for the crime of “stalking” under s. 784.048(2), F.S., that results from acts of “following” or “cyberstalking” a victim.⁷ Nor is there a *specific* public-records exemption in Florida law for the voting and voter registration records of victims of stalking or aggravated stalking, unless the stalking involves domestic violence.⁸

The *general exemption* in s. 119.071(2)(j)1., F.S., provides a 5-year exemption for a victim’s address and telephone number upon the victim’s written request of each agency possessing such information, *provided* the request is accompanied by “official verification that an applicable crime has occurred” (i.e., a police report). Agencies possessing such “official verification” can charge victims for copies and certified copies.⁹

III. Effect of Proposed Changes:

Open Government Sunset Review

Committee Substitute for Senate Bill 2188 reenacts public records exemptions protecting the confidentiality of certain private information relating to voters and voter registration. It makes *exempt and confidential* the following information:

- Declinations to register to vote.
- The location where a person registered or updated a voter registration.
- Social security numbers (“SSN”), drivers’ license numbers, and Florida ID numbers.

It also maintains the exemption against *copying* voter and voter registration signatures; signature *inspection* is still allowed.

Election-Records Protection for Stalking Victims

The *specific exemption* in the bill provides broader and more voter-friendly protection for victims of stalking and aggravated stalking with respect to voter registration and voting records than provided under both: the *general public-records exemption* for victims of aggravated stalking and harassment in Chapter 119; and, the Attorney General’s Address Confidentiality Program for Victims of Domestic Violence. Further, the potential disincentives with respect to

⁶ Section 119.071(2)(j)1., F.S.

⁷ Section 784.048(2), F.S., provides that the criminal offense of “stalking” results from a person willfully or maliciously *following, harassing, or cyberstalking* another person. The general public records exemption in s. 119.071(2)(j), F.S., provides confidentiality protection for victims of “harassment” --- only one of three possible acts that can constitute the offense of “stalking.”

⁸ Section 741.465, F.S., exempts from disclosure (for a period of 4 years) the name, address, and telephone of participants in the Address Confidentiality Program for Victims of Domestic Violence contained in voter registration and voting records held by the Department of State and supervisors of elections. Sections 741.465(2), 741.403(3), F.S. The term “domestic violence” embraces the crimes of stalking and aggravated stalking involving family or household members. Section 741.28, F.S.

⁹ Section 119.07(4), F.S.

registering to vote --- a necessary precursor to exercising the fundamental right to vote in Florida --- justify the bill's greater protections for stalking victim confidentiality in the electoral process.¹⁰

The bill's *specific exemption*:

- Protects *stalking* victims who are being repeatedly “followed” or “cyberstalked” pursuant to s. 784.048(2), F.S. Further, it addresses *all* victims of stalking and aggravated stalking, not just those in situations involving domestic violence.
- Protects persons *residing with* stalking or aggravated stalking victims, acknowledging the real-world situation where stalkers attempt to locate their victims through friends or relatives with whom they may reside.
- Protects the *names* of victims, which current law only exempts for domestic violence victims. Identifying a victim's name in the voting context necessarily places the victim in a *specific county and voting precinct within that county*, as residence in a particular county is a condition of eligibility to register to vote, is the basis for voter administration and maintenance, and determines a voter's appropriate polling place.
- Protects persons *filing sworn statements* indicating that they, or someone they reside with, are victims of stalking or aggravated stalking --- as opposed to having to file a written request with the appropriate agencies along with a police report or some other “official verification that an actual crime has occurred.” Persons willfully submitting a false statement commit a 3rd degree felony, which will serve to curb abuse.¹¹
 - Victims of stalking or aggravated stalking may decide *not to report* the crime for a variety of reasons --- i.e., fear of retribution, future hopes of reconciling with a known party, familiarity with the stalker, etc. In such cases, there would be no “official” documentation or verification, and thus no public-records protection available under the general exemption in Chapter 119.
 - The costs and inconveniences associated with obtaining official documentation, (including fees for copies and travel/ mailing costs to obtain copies) may discourage some --- especially the poor, the physically-disabled, and persons residing in urban areas without access to private transportation --- from registering to vote.
 - Florida law provides that voters must be registered to vote at least 29 days before an election. Voters often wait until the very last moment to register to vote, as evidenced by the crush of registration application typically received just prior to the book-closing deadline. Stalking victims waiting until the last-minute to register who have not obtained the requisite official documentation in advance may face a Hobson's choice between registering to vote and preserving their safety and privacy.
- Allows persons registering to vote to submit their sworn statement requesting public-records protection *at that time*, as opposed to having to separately research and identify the agency responsible for maintaining voting records (Department of State, Division of

¹⁰ Similarly, the courts have long recognized that political speech deserves *greater* protection than commercial speech. See e.g., *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 422 (1992) (political speech occupies the highest position in hierarchy of free speech constitutional protections; commercial speech is regarded as sort of second-class expression).

¹¹ Section 104.011, F.S.

Elections or local supervisor of elections) along with the appropriate address to file their written request for protection under the Chapter 119 general exemption. This could present an unnecessary barrier to less-educated voters and discourage otherwise-eligible voters from participating in the electoral process.

Other Potential Implications:

Were the legislature to fail to reenact section 97.0585, F.S., declinations to register to vote, the place where a person registered to vote, and, *arguendo*, the place where a person *updated* a voter registration would still be protected from disclosure by federal law. Also, the voter or voter registrant's SSN would be afforded lesser protection under the general public records exemption in section 119.071(5)(a), F.S. Exemptions for driver's license numbers, Florida ID numbers, and signatures, however, would be extinguished.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State may incur some costs to conform the statewide voter registration system to the requirements of the new public-records exemption for stalking victims, to design and post the requisite sworn statement on its web site, and to send out expiration notices to stalking victims. Overall, however, the impact is expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Ethics and Elections on March 18, 2010

The CS differs from the original bill in that it: creates a renewable, two-year exemption from the public election records for the name, address, and telephone number of a stalking victim, or someone living with a stalking victim, upon the filing of a prescribed sworn statement.

- B. **Amendments:**

None.