

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 Ethics and Elections

BILL: CS/SB 1260

INTRODUCER: Committee on Ethics and Elections and Senator Ring

SUBJECT: Public Records

DATE: March 11, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	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:

CS/SB 1260 is the public records exemption bill that is travelling with SB 1352. SB 1352 requires the uniform statewide voter registration application to include a field for a voter registration applicant's e-mail address. Current law does not provide a public record exemption for the e-mail address of a voter or voter registration applicant.

This bill provides that the e-mail address of a voter registration applicant or a voter is confidential and exempt from public record requirements.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemption will take effect on the same date as Senate Bill 1352 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

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 newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption for certain voter information; thus, it requires a two-thirds vote for final passage.

This bill substantially amends s. 97.0585, Florida Statutes.

II. Present Situation:

Public Records Law

Art. I, s. 24(a) of the State 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, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² 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.

Voter Registration

Current law requires the Department of State to prescribe by rule a uniform statewide voter registration application.³ The application must elicit certain information from the voter applicant, such as the applicant's name, date of birth, and address of legal residence.⁴

¹ Art. I, s. 24(c), Fla. Const.

² See s. 119.15, F.S.

³ Section 97.052(1), F.S.

⁴ Section 97.052(2), F.S.

Public Record Exemption for Voter Registration Information

Current law also provides a public record exemption for certain information held by an agency⁵ for purposes of voter registration.⁶ Specifically, the following information is confidential and exempt⁷ from public record requirements:

- All declinations to register to vote made pursuant to ss. 97.057 and 97.058, F.S.
- Information relating to the place where a person registered to vote or where a person updated a voter registration.
- The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

In addition, the signature of a voter registration applicant or a voter is exempt from copying requirements.⁸

The public record exemption applies to information held by an agency before, on, or after the effective date of the exemption.⁹

Senate Bill 1352

Senate Bill 1352 requires the uniform statewide voter registration application to include a field for a voter registration applicant's email address and an indication of whether the applicant wishes to receive sample ballots by e-mail.

III. Effect of Proposed Changes:

This bill expands the current public record exemption for voter registration information. It provides that the e-mail address of a voter registration applicant or voter is confidential and exempt from public record requirements.

Current law provides for retroactive application of the public record exemption. As such, the exemption for e-mail addresses also will apply retroactively.

⁵ The exemption applies to information held by an agency as defined in s. 119.011, F.S. 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."

⁶ Section 97.0585, F.S.

⁷ 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).

⁸ Section 97.0585(2), F.S.

⁹ Section 97.0585(4), F.S.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemption will take effect on the same date as Senate Bill 1352 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. Article VII, s. 18(d) of the State Constitution provides that election laws are exempt from the Municipality/County Mandates restrictions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional 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 newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption for voter information; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption for voter information; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the email address of a voter or voter registration applicant. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, those agencies could incur costs associated with redacting confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

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 11, 2013:

The CS differs from the original bill in that it provides that the effective date of this provision is the same date that SB 1352 or similar legislation takes effect, if such legislation is adopted in the same legislative session or extension thereof and becomes law.

B. Amendments:

None.