

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: SB 702

INTRODUCER: Senators Altman and Dean

SUBJECT: Public Records/Voters and Voter Registration

DATE: January 14, 2016

REVISED: 01/19/16

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 702 makes confidential and exempt from public records the residential address, birth date, telephone number, and e-mail address of voter registration applicants and voters, as well as ALL information concerning 16 and 17-year-old minors who preregister to vote; *notwithstanding*, a canvassing board, election official, the voter himself or herself, and specific election-related, political persons and groups (opposed candidates, political parties, and registered political committees, for political purposes only) may continue to examine and copy such information for *non-minor* voters and voter registration applicants.

This public records issue is one of the Florida Association of Supervisors of Elections' 2016 legislative priorities.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Because this bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill will take effect July 1, 2016.

II. Present Situation:

With relatively few exceptions, voter registration information in Florida is a public record¹; this has been the case for a long time.

¹ Section 97.0585, F.S. In addition to protections afforded in other parts of the statutes, Florida election law makes confidential and exempt from disclosure by an agency a voter registration applicant's or voter's social security number, driver's license number, Florida I.D. number, the place where a person registered to vote or updated a registration, and all

Any person is currently entitled to request a copy of the non-confidential portion of the entire statewide voter registration list, and may use that information for *any purpose whatsoever*;² this, conversely, has only been the case only since 1998 — when the State authorized the first *statewide* voter registration database.

Floridians have long-enjoyed the right to *inspect* the non-confidential portion of the voter registration records of each county. Until about 20 years ago, however, copying those voter records was the *exclusive* province of certain governmental entities (the courts, cities, agencies) and certain election-related, political persons and groups (candidates, registered political committees, committees of continuous existence, political parties and incumbent officeholders).³

Prior to 1998, *use* of non-confidential voter information by such individuals and groups was largely limited to specific purposes: a) candidates could only use the information to further their candidacy; b) registered political committees, committees of continuous existence, and political parties or officials for political purposes only; and, c) incumbent officeholders in order to report to their constituents. Further, there was a *specific prohibition* against using such information for *commercial purposes*.⁴ In fact, someone seeking this information was required to swear and subscribe a written oath that he or she would only use the information as prescribed by the law and not permit any unauthorized person to use or copy it.⁵

All this changed in 1997, when the Legislature authorized the initial statewide voter registration database which for the first time compiled, in *a single location*, all 67 counties' "official" voter registration lists.⁶ The idea of this Central Voter File ("CVF"), the precursor to the current Florida Voter Registration System ("FVRS"), was to make it easier for those engaged in statewide and multicounty races to compile the necessary voter data without having to run around to the individual supervisors' offices.⁷

At the time, however, the Legislature made an important change that is at the heart of this bill: it specifically designated the CVF as a public record, and allowed *any person* to request a copy of non-protected information and to use it for *any purpose whatsoever, without limitation*.⁸ This is essentially the situation that persists to this day with current FVRS.⁹

declinations to vote. *Id.* It also exempts from copying, but not inspection, the signature of a voter registration applicant or a voter. *Id.*

² *Id.*

³ Notwithstanding, anyone could request a copy of non-confidential voter registration information following an election. *See e.g.*, Section 98.095, F.S. (1995).

⁴ *Id.*

⁵ *Id.*

⁶ Ch. 97-13, s. 39, LAWS OF FLA.

⁷ Senate Ethics and Elections Committee Bill Analysis, CS/SB 568, at p. 22 (March 18, 1997) (on file with the Senate EE Committee).

⁸ *Id.*; *see also*, Ch. 97-13, s. 39, LAWS OF FLA.

⁹ In 2001, the Legislature sought to adopt a much more restrictive public records scheme similar to the one proposed in the current bill, in connection with a then-newly-authorized statewide voter registration database. Ch. 2001.40, s. 70-72, LAWS OF FLA. (codified at s. 98.0979, F.S. (2002)). Three years later, a Leon County circuit court judge struck the statute down void *ab initio* on *procedural grounds*, finding that it was adopted in a general elections bill without the requisite statement of public necessity in violation of Art. I, s. 24 of the Florida Constitution —the effect being that the statute never existed or was never on the books. *See Cable News Network, et al. v. Florida Dep't of State*, Case No. 2004 CA 001259 (2nd Jud. Cir., July

In the context of the CVF change that took effect in 1998, voter privacy was likely not the paramount concern. Folks would have had to acquire a copy of the entire voter list — possibly in printed, hard copy form — from the Division of Elections in Tallahassee, and process the information for their purposes. Further, the information could only be disseminated to a relatively finite number of people by word-of-mouth or letter without incurring great expense. In other words, there were a number of pragmatic and economic safeguards in place to prevent widespread dissemination of this material.

Fast-forward about 20 years to today and the *Brave New World* of the Internet and so-called “Big Data,” and the problem becomes clear. Anyone can request an electronic copy of all the non-confidential voter registration information in the State and quickly post it on the Internet for literally the entire world to see at miniscule to no cost, thereby raising serious personal privacy issues.

It should come as no surprise that this is precisely what has transpired. At least one web site *that contains commercial or sponsored links*, <http://flvoters.com/>, provides extensive details about every registered voter in the State — including the voter’s name, date of birth, residence address, mailing address, voter ID number, when the person registered to vote, what political party the person is affiliated with, the voter’s telephone number, e-mail address, race, precinct number, as well as other information about district races in which the person is eligible to vote. This information can be accessed by voter’s name, birth date, or address.

As it turns out, *not every voter takes kindly to having their personal information put out there on the web* — or maybe having their neighbors know which political party they belong to. Committee staff and some Senators’ aides have fielded numerous calls from constituent voters in the past few months, upset that *personal* information that they provided to government officials in order to vote is posted online.

The bill’s public necessity statement provides that putting a voter’s address, date of birth, telephone number, and e-mail address in the public domain might make them easier targets for identity fraud, or may lead to consumer scams, unwanted solicitations, or other invasive contacts. It notes that having a voter’s e-mail address out there may lead to fraudulent absentee ballot requests. Further, it could discourage voters from disclosing their e-mail address, which could slow down and increase the cost of transmitting absentee ballots to voters requesting them. With respect to 16 and 17-year-old minors who are entitled to pre-register to vote,¹⁰ it cites the need for increased protection for this class of persons who may potentially be subject to additional solicitations, harassment, stalking, or intimidation. It also cites the possibility that this might discourage some minors from preregistering to vote, a rationale that arguably applies to non-minors.

On the other side of the coin, the First Amendment Foundation is on record in opposition to the bill. An excerpt from the open letter on its web site to the bill sponsor states as follows:

1, 2004) (Final Declaratory Summary Judgment). The Legislature repealed the statute the following year. *See*, Ch. 2005-278, s. 55, LAWS OF FLA.; Ch. 2005-277, s. 77, LAWS OF FLA.

¹⁰ Sec. 97.041(1)(b), F.S.

While we understand the rationale for the proposed exemption, much of the information the bill purports to protect in a voter record is currently available from a variety of public sources. Of specific concern is the exemption for ... address and date of birth — if I know a voter’s name, for example, such information is readily and easily accessible. ... Additionally, researchers and statisticians compiling information about voters and specific elections commonly use this information, and to close access to important historical information is contrary to the public interest.¹¹

III. Effect of Proposed Changes:

SB 702 makes confidential and exempt from public disclosure:

- The legal residence address, date of birth, telephone number, and e-mail address of a voter registration applicant or voter, and,
- All information relating to 16 and 17-year-old minors who apply for preregistration.

The bill, however, *does* allow the following persons and groups to continue to inspect and copy such information as it relates to *non-minors*:

1. The voter or voter registration applicant, limited to his or her own record;
2. A canvassing board;
3. An election official;
4. A political party or official thereof;
5. A candidate who has filed qualification papers and is opposed in an upcoming election; and,
6. A registered political committee, for political purposes only.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2021, unless reviewed and reenacted by the Legislature.

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

Because this bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

General Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹² This applies to the

¹¹ See letter from Barbara A. Peterson, President, First Amendment Foundation, to The Honorable Thad Altman (12 January 2016), available at <http://floridafaf.org/files/2015/09/SB-702.pdf> (last accessed 14 Jan. 2016).

¹² FLA. CONST., Art. I, s. 24(a).

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.¹³

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.¹⁴ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.¹⁵ The Public Records Act states that:

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.¹⁶

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.¹⁷ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”¹⁸ A violation of the Public Records Act may result in civil or criminal liability.¹⁹

The Legislature may create an exemption to public records requirements.²⁰ An exemption must pass by a two-thirds vote of the House and the Senate.²¹ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.²² A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.²³

¹³ FLA. CONST., art. I, s. 24(a).

¹⁴ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

¹⁵ Public records laws are found throughout the Florida Statutes.

¹⁶ Section 119.01(1), F.S.

¹⁷ 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.” Section 119.011(2), F.S., defines “agency” to mean 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.”

¹⁸ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

²⁰ FLA. CONST., art. I, s. 24(c).

²¹ FLA. CONST., art. I, s. 24(c).

²² FLA. CONST., art. I, s. 24(c).

²³ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found 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. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d

An exemption may provide that a record is ‘confidential and exempt’ or ‘exempt.’ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.²⁴

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will adversely affect commercial web sites in the business of sharing Florida voter registration data. While the precise impact is unclear, the reduction will likely be significant.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Governor’s Veto (2013)

Governor Scott vetoed a public records exemption for voters’ e-mail addresses in 2013 (CS/HB 249 [2013]), despite it having passed the Legislature with only one “NO” vote in each chamber. The veto message provides in pertinent part:

This bill seeks to create a public records exemption for email addresses obtained as part of the voter registration process. The mailing addresses of Florida’s registered voters have traditionally been part of the public record as a means of delivering important information on election-related issues, and to facilitate communication from elected officials to their constituents. In the modern age of electronic communications, email is

189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

²⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004). A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

increasingly the most convenient and efficient means to receive information that was previously sent through the mail. In order to ensure that voters continue to have efficient access to election-related materials and information, it is essential to keep these channels of communication open to the public.²⁵

The 2013 bill may be distinguishable, however, because it *did not allow* access to voter information by political and election-related individuals and groups with “skin in the game.” The current bill would still allow opposed candidates, political parties, and political committees to view and copy voter e-mail addresses, as well as the other items of non-minor voter information being made confidential.

VIII. Statutes Affected:

This bill substantially amends section 97.0585 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²⁵ Governor Scott’s Veto Letter, CS/HB 249 (14 June 2013), available at: <http://www.flgov.com/wp-content/uploads/2013/06/Veto-Letter-HB-249.pdf> (last accessed on 14 January 2014).