

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 281 Pub.Rec./Voters and Voter Registration
SPONSOR(S): State Affairs Committee; Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 342

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	12 Y, 0 N	Toliver	Harrington
2) Public Integrity & Ethics Committee	16 Y, 0 N	Poreda	Rubottom
3) State Affairs Committee	21 Y, 0 N, As CS	Toliver	Williamson

SUMMARY ANALYSIS

The Florida Voter Registration Act delineates the qualifications and requirements necessary for a person to register to vote in Florida. In order to become a registered voter in Florida, a person must register pursuant to The Florida Election Code and must be at least 18 years of age. However, a person who is 16 or 17 years of age may preregister and, if the application is accepted and complete, may vote in any election occurring on or after his or her 18th birthday.

Current law provides that the following voter registration information held by an agency is confidential and exempt from public record requirements:

- All declinations to register to vote;
- Information relating to the place where a person registered to vote or where a person updated a voter registration; and
- The social security number, driver license number, and Florida identification number of a voter registration applicant or voter.

In addition to the above information, the signature of a voter registration applicant or voter is protected from copying.

The bill expands the public record exemption for voter information to make telephone numbers and email addresses of voter registration applicants or voters confidential and exempt from public records requirements. The bill provides that the information may be reproduced for the voter registration applicant or voter, a canvassing board, an election official, a political party or official thereof, a candidate with opposition, or a political committee for political purposes only. The bill also makes all information concerning 16 and 17 year olds who preregister to vote confidential and exempt from public record requirements; once those preregistered voters attain the age of 18, their information will become available like any other voter registrant or voter.

The bill provides for repeal of the exemptions on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides public necessity statements as required by the Florida Constitution.

Article I, s. 24(c) of the Florida 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 a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the Florida 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 Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.²

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act³ 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 more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.⁴

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.

Voter Registration and Pre-registration

The Florida Voter Registration Act⁵ delineates the qualifications and requirements necessary for a person to register to vote in Florida. In order to become a registered voter in Florida, a person must register pursuant to The Florida Election Code⁶ and must be at least 18 years of age,⁷ however, a person who is 16 or 17 is allowed to preregister and, if their application is accepted and complete, may vote in any election occurring on or after that person's 18th birthday.⁸

The Department of State must prescribe by rule a uniform statewide voter registration application⁹ designed to elicit the following information from the applicant:

- The applicant's name, date of birth, address of legal residence;
- E-mail address;
- County of legal residence;
- Race or ethnicity;

¹ Article I, s. 24(c), FLA. CONST.

² *Id.*

³ Section 119.15, F.S.

⁴ Section 119.15(6)(b), F.S.

⁵ Part II, ch. 97, F.S.

⁶ Chapters 97-106, F.S., are cited as The Florida Election Code.

⁷ Section 97.041(1)(a), F.S.

⁸ Section 97.041(1)(b), F.S.

⁹ Section 97.052(1), F.S.; *see also* r. 1S-2.040, F.A.C. incorporating form DS-DE 39 by reference.

- 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 applicant's social security number;
- Florida driver license number or identification number;
- An indication, if applicable, that the applicant has not been issued a Florida driver license, a Florida identification card, or a social security number;
- Telephone number (optional);
- Signature of applicant under penalty for false swearing pursuant to law, by which the person subscribes to the oath and swears that the information contained in the registration application is true;
- Whether the applicant has been convicted of a felony and, if convicted, has had his or her civil rights restored; and
- Whether the applicant has been adjudicated mentally incapacitated with respect to voting or, if so adjudicated, has had his or her right to vote restored.¹⁰

Public Record Exemption

Current law provides that certain voter registration information held by an agency¹¹ is confidential and exempt¹² from public record requirements.¹³ The following voter registration information is protected from disclosure:

- All declinations to register to vote;
- Information relating to the place where a person registered to vote or where a person updated a voter registration; and
- The social security number, driver 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 the copying requirements of s. 119.07(1), F.S.

Effect of the Bill

The bill expands the public record exemption for voter information to make telephone numbers and email addresses of voter registration applicants or voters confidential and exempt from public records requirements. The bill provides that the information may be reproduced for the voter registration applicant or voter, a canvassing board, an election official, a political party or official thereof, a candidate with opposition in an upcoming election, or a political committee for political purposes only. The bill also makes all information concerning 16 and 17 year olds who preregister to vote confidential and exempt from public record requirements. Once those preregistered voters attain the age of 18, their information will become available like any other voter registrant or voter.

¹⁰ Section 97.052(2), F.S.

¹¹ Section 119.011, F.S., defines the term "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 ch. 119, F.S., 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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹³ Section 97.0585, F.S.

The bill provides statements of public necessity as required by the Florida Constitution. The public necessity statements provide that a voter's telephone number and email address is personal and sensitive information that could be misused by dishonest persons if left in the public domain. The statements further provide that minors are more vulnerable members of society and the widespread release of information acquired through preregistration activities may be used to solicit, harass, stalk, or intimidate such individuals. The bill provides for repeal of the exemptions on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1 amends s. 97.0585, F.S., relating to public records exemptions for information concerning voters and voter registration applicants.

Section 2 provides statements of public necessity.

Section 3 provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an 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.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the Florida 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 expands a public record exemption for certain voter registration information to include telephone numbers, email addresses, and information relating to pre-registered voters. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 8, 2019, the State Affairs Committee approved an amendment and reported the bill favorably as a committee substitute. The amendment expanded the public record exemption for voter information to make telephone numbers and email addresses of voter registration applicants or voters confidential and exempt from public records requirements. The amendment provided that the information may be reproduced for the voter registration applicant or voter, a canvassing board, an election official, a political party or official thereof, a candidate with opposition in an upcoming election, or a political committee for political purposes only. The amendment also provided a public necessity statement as required by the Florida Constitution.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.