

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 1492

INTRODUCER: Senator Broxson

SUBJECT: Public Records/Voter or Voter Registration Applicant

DATE: March 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Rey</u>		<u>Roberts</u>	<u>EE</u>	<u>Pre-Meeting</u>

I. Summary:

SB 1492 expands an existing public record exemption for voter registration information. This bill expands the current public record exemption for voter information to provide that the address of legal residence, date of birth, telephone number, and e-mail address of voter registration applicant or voter is confidential and exempt from public record disclosure requirements.

The bill provides that the voter information designated as confidential and exempt in this bill shall only be made available to or reproduced for:

- The individual whose information was made confidential and exempt.
- A canvassing board or an election official in his or her official capacity.
- A political party or official thereof, a candidate who has filed qualification papers, an elected official, or a registered political committee, for political purposes only.

The bill provides for repeal of the exemption on October 2, 2026, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

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

This bill takes effect on July 1, 2021.

II. Present Situation:

Article I, s. 24(a) of the Florida Constitution sets forth the state's 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. In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive

branch records.¹ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.² The Public Records Act guarantees every person's right to inspect and copy any state or local government public record³ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁴ The Legislature, however, may provide by general law for exemption⁵ of records from the requirements of Article I, s. 24(a) of the Florida Constitution.⁶

The Open Government Sunset Review Act⁷ 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 government 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 safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁸

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.⁹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided by law.¹⁰

¹ The Public Records Act does not apply to legislative or judicial records. *Lock 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 record exemptions for the Legislatures are primarily located in s. 11.0431(2) – (3), F.S.

² Public records laws are found throughout the Florida Statutes.

³ Section 119.011(12), F.S., defines "public records" 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."

⁴ Section 119.07(1)(a), F.S.

⁵ FLA. CONST., art I, s. 24(c). There is a difference between records the Legislature designates as exempt from public record disclosure requirements and those the Legislature designates *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 (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 2004); and *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 any person other than the persons or entities specifically designated in the statutory exemption (see Attorney General Opinion 85-62, August 1, 1985).

⁶ Article I, s. 24(c), FLA. CONST.

⁷ Section 119.15, F.S.

⁸ Section 119.15(6)(b), F.S.

⁹ Section 119.15(3), F.S.

¹⁰ Section 119.15(7), F.S.

Voter Registration

Current law requires the Department of State to prescribe by rule a uniform statewide voter registration application.¹¹ The application must elicit certain information from the voter applicant, such as the applicant's name, date of birth, and address of legal residence.¹²

In 1997, 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.¹³ 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 contact the individual supervisors of elections' offices.¹⁴ The CVF was designated as a public record, allowing any person to request a copy of non-protected information and to use it for any purpose whatsoever, without limitation.¹⁵

Public Record Exemption for Voter Registration Information

Current law provides a public record exemption for certain information held by an agency¹⁶ for purposes of voter registration.¹⁷ Specifically, the following information is confidential and exempt from public record disclosure requirements:

- All declinations to register to vote 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 license number, and Florida identification number of a voter registration applicant or voter.
- Information related to a voter registration applicant's or voter's prior felony conviction and whether such person had his or her voting rights restored by the Board of Executive Clemency or pursuant to s. 4, Art. VI of the Florida Constitution.
- All information concerning preregistered voter registration applicants who are 16 or 17 years of age.

In addition, the signature of a voter registration applicant or a voter is exempt from copying requirements.¹⁸

This public record exemption for voter registration information applies to information held by an agency before, on, or after the effective date of the exemption.¹⁹

¹¹ Section 97.052(1), F.S.

¹² Section 97.052(2), F.S.

¹³ Ch. 97-13, s. 39, L.O.F.

¹⁴ Senate Ethics and Elections Committee Bill Analysis, CS/SB 568, at p. 22 (March 18, 1997)

¹⁵ Ch. 97-13, s. 39, L.O.F.

¹⁶ Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, 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 private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

¹⁷ Section 97.0585, F.S.

¹⁸ Section 97.0585(2), F.S.

¹⁹ Section 97.0585(3), F.S.

Using Voter Registration Information to Commit Fraud

Information collected in voter registration applications, such as address of legal residence, date of birth, telephone number, and e-mail address, can be used to commit fraud. Opportunists can use the publicly available information to call voters, claim to represent a candidate, and solicit credit card or banking information for “campaign contributions” from the targeted voters.²⁰

The information in voter registration applications can also be used to undermine elections. Publicly available e-mail addresses can be used for geotargeted disinformation campaigns before, during, and after an election, especially if results are contested.²¹ During the 2020 election cycle, foreign governments sent Florida voters threatening emails in an effort to intimidate them and weaken their confidence in our elections.²²

Public Records Status of E-Mail Addresses

Under Florida law, e-mail addresses are public records. Agency²³ websites that use e-mail are required to post a notice to users making them aware of this fact and advising them not to send e-mail to the agency if they do not want their e-mail address released in response to a public records request.²⁴

There are public record exemptions for e-mail addresses collected by agencies. The information provided by an individual, including email addresses, to an agency for the purpose of receiving emergency notifications from the agency is exempt.²⁵ In 2015²⁶, a public records exemption was created for a taxpayer’s e-mail address held by a tax collector for statutorily defined purposes.²⁷ The Legislature found that the public availability of personal e-mail addresses invited and exacerbated thriving and well-documented criminal activities and put taxpayers at risk of harm.²⁸

²⁰ Saraceno, J. (2018). ‘Scammers use Phone Calls to Prey on Voter’, AARP, 18, October. Available at: <https://www.aarp.org/politics-society/government-elections/info-2018/midterm-election-scams.html> (last accessed on March 2, 2021).

²¹ Dilanian, K. (2020). ‘Cybersecurity company finds hacker selling info on 186 million U.S. voters’, NBCNews, 21, October. Available at: <https://www.nbcnews.com/politics/2020-election/cybersecurity-firm-finds-hacker-selling-info-148-million-u-s-n1244211> (last accessed on February 26, 2021).

²² *Id.*, Quinn, M. (2020). ‘Emails threatening Florida voters to “vote for Trump or else!” linked to overseas servers’, CBS News, 21, October. Available at: <https://www.cbsnews.com/news/florida-emails-proud-boys-vote-trump-linked-overseas-servers/> (last accessed on February 26, 2021).

²³ Section 119.011(2), F.S., defines “agency” 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 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 on behalf of any public agency.”

²⁴ Section 668.6076, F.S.

²⁵ Ch. 2011-85, L.O.F. The sunset date for the exemption was repealed on October 1, 2016, Ch. 2016-27, L.O.F.

²⁶ Ch. 2015-13, L.O.F. The sunset date for the exemption was repealed on October 1, 2020, Ch. 2020-166, L.O.F.

²⁷ Per s. 197.3225, F.S., an exemption for a taxpayer’s email address is exempt if the tax collector uses the emails for 1) sending a quarterly tax notice for prepayment of estimated taxes to the taxpayer pursuant to s. 197.222(3), F.S.; 2) obtaining the taxpayer’s consent to send the tax notice described in s. 197.322(3), F.S.; 3) sending an additional tax notice or delinquent tax notice to the taxpayer pursuant to s. 197.343, F.S.; or 4) sending a tax notice to a designated third party, mortgagee, or vendee pursuant to s. 197.344(1), F.S.

²⁸ Ch. 2015-13, s. 2, L.O.F.

III. Effect of Proposed Changes:

This bill expands the current public record exemption for voter information. It provides that the address of legal residence, date of birth, telephone number, and e-mail address of voter registration applicant or voter is confidential and exempt from public record disclosure requirements.

Current law provides for retroactive application of the public record exemption for voter registration information.²⁹

The bill provides that the voter information designated as confidential and exempt in this bill shall only be made available to or produced for:

- The individual whose information was made confidential and exempt.
- A canvassing board or an election official in his or her official capacity.
- A political party or official thereof, a candidate who has filed qualification papers, an elected official, or 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, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for passage of a newly created or expanded public record or public meeting exemption. Therefore, this bill requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill that creates or expands an exemption to public record disclosure requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

²⁹ The Florida Supreme Court has ruled that a public record exemption may be applied retroactively only if the enacting legislation clearly expresses intent such exemption is to be applied retroactively (*Memorial Hospital-West Volusia, Inc. v. New-Journal Corporation*, 729 So.2d 373 (Fla. 2001)).

This public necessity statement provides that disclosure of information held by an agency concerning a voter's address of legal residence, date of birth, telephone number, and e-mail address could be misused to commit identity theft, consumer scams, unwanted solicitations, or other forms of invasive contacts. Unrestricted access to e-mail addresses could be misused to commit voter fraud. Voters can request vote-by-mail ballots using an email address. Individuals, other than the intended voter, could use e-mail addresses to confiscate and misuse requested vote-by-mail ballots.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may adversely impact commercial web sites and business that profit from sharing Florida voter registration data.

The private sector will be subject to the cost, to the extent imposed, associated with the agency making redactions in response to public records request.

C. Government Sector Impact:

The bill may have a fiscal impact on agencies relating to training or redaction of the newly confidential and exempt information. However, costs are likely minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Governor's Veto (2013)**

Governor Scott vetoed a public record 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 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.³⁰

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 political parties, a candidate who has filed qualification papers, an elected official, or political committees to view and copy the address of legal residence, date of birth, telephone number, and e-mail address of voter registration applicant or voter.

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.

³⁰ Governor Scott's Veto Letter, CS/HB 249 (June 14, 2013), available at: <http://www.flgov.com/wp-content/uploads/2013/06/Veto-Letter-HB-249.pdf> (last accessed on January 11, 2021).