

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7003      PCB EEG 24-01      OGSR/Preregistered Voters

**SPONSOR(S):** State Affairs Committee, Ethics, Elections & Open Government Subcommittee, Holcomb

**TIED BILLS:**                    **IDEN./SIM. BILLS:** SB 7010

| REFERENCE  | ACTION           | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|------------------|---------|--|
| Orig. Comm.: Ethics, Elections & Open<br>Government Subcommittee | 12 Y, 0 N        | Skinner | Toliver                                  |
| 1) State Affairs Committee                                       | 17 Y, 3 N, As CS | Skinner | Williamson                               |

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Florida Voter Registration Act delineates the qualifications and requirements necessary for a person to register to vote in Florida. The Department of State (DOS) must prescribe by rule a uniform statewide voter registration application designed to elicit certain information from the applicant.

The Florida Election Code allows a person who is 16 or 17-years-old to pre-register to vote and, if their application is complete, he or she may vote in any election occurring on or after that person's 18th birthday. In 2019, the Legislature created the public record exemption concerning all information of 16 or 17-year-old voter registration applicants who pre-register to vote.

Current law provides that the following voter registration information held by an agency and obtained for the purpose of voter registration 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.
- The social security number, driver license number, and Florida identification number of a voter registration applicant or voter.
- All information concerning 16 or 17-year-old voter registration applicants who pre-register to vote.

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

The bill saves from repeal the public record exemption for all information concerning 16 or 17-year-old voter registration applicants who pre-register to vote, which will repeal on October 2, 2024, if the bill does not become law. The bill also authorizes an agency to disclose confidential and exempt voter registration information to a governmental entity if it is necessary for such entity to perform any required duties that are directly related to election administration.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The OGSR Act 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:

- 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.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

##### Voter Registration and Pre-registration

The Florida Voter Registration Act<sup>5</sup> 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<sup>6</sup> and must be at least 18 years of age,<sup>7</sup> with one exception. Current law allows a person who is 16 or 17-years-old to pre-register to vote and, if his or her application is accepted and complete, the person may vote in any election occurring on or after his or her 18th birthday.<sup>8</sup>

The Department of State (DOS) must prescribe by rule a uniform statewide voter registration application<sup>9</sup> designed to elicit the following information from the applicant:

- The applicant's name, date of birth, address of legal residence and mailing address, if different.
- E-mail address.
- County of legal residence.
- Race or ethnicity.
- State or country of birth.
- Sex.
- Party affiliation.

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Article I, s. 24(c), FLA. CONST.

<sup>5</sup> Part II, ch. 97, F.S.

<sup>6</sup> Chapters 97-106, F.S., are cited as "The Florida Election Code." See s. 97.011, F.S.

<sup>7</sup> Section 97.041(1)(a)1., F.S.

<sup>8</sup> Section 97.041(1)(b), F.S.

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

- 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 application is being used for initial registration, to update a registration, or to request a replacement voter information card.
- Whether the applicant is a United States citizen.
- Whether the applicant has been convicted of a felony and, if convicted, has had his or her voting rights restored.
- 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.<sup>10</sup>

The Florida Election Code requires DOS to adopt rules prescribing minimum standards for nonpartisan voter education,<sup>11</sup> which the department has since adopted through the rulemaking process.<sup>12</sup> Supervisors of elections (SOEs) are required to implement those standards and conduct additional nonpartisan education efforts as necessary to ensure that voters have a working knowledge of the voting process.<sup>13</sup> The DOS rule requires each SOE to conduct an annual high school voter registration and education program at each public high school in the county to educate and reach eligible high school students concerning registering and pre-registering to vote.<sup>14</sup> The program must be developed in cooperation with the SOE's local school board.<sup>15</sup>

#### Public Record Exemptions Related to Voter Information

Current law provides that certain voter registration information held by an agency<sup>16</sup> is confidential and exempt<sup>17</sup> from public record requirements.<sup>18</sup> 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.
- The social security number, driver license number, and Florida identification number of a voter registration applicant or voter.
- All information concerning 16 or 17-year-old voter registration applicants who pre-register to vote.<sup>19</sup>

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<sup>10</sup> Section 97.052(2), F.S.

<sup>11</sup> Section 98.255(1), F.S.

<sup>12</sup> Rule 1S-2.033, F.A.C.

<sup>13</sup> Section 98.255(2), F.S.

<sup>14</sup> Rule 1S-2.033, F.A.C.

<sup>15</sup> *Id.*

<sup>16</sup> "Agency" means 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. Section 119.011(2), F.S.

<sup>17</sup> There is a difference between records the Legislature designates exempt from public record 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. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 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 Op. Att'y Gen. Fla. 04- 09 (2004).

<sup>18</sup> Section 97.0585, F.S.

<sup>19</sup> Section 97.0585(1), F.S.

In addition, the signature of a voter registration applicant or a voter is exempt from the legal requirement that allows a person to copy a public record.<sup>20</sup>

#### Public Record Exemption under Review

In 2019, the Legislature created the public record exemption for all information concerning 16 or 17-year-old voter registration applicants who pre-register to vote.<sup>21</sup>

The 2019 public necessity statement<sup>22</sup> provides that:

Information concerning preregistered voter registration applications who are 16 or 17 years of age could be misused if released. 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. Without such protection, a minor may be less likely to take advantage of preregistering to vote, thus hindering the effective and efficient administration of a program that otherwise encourages greater participation in the democratic process.<sup>23</sup>

Pursuant to the OGSR Act, the exemption will repeal on October 2, 2024, unless reenacted by the Legislature.<sup>24</sup>

During the 2023 interim, House and Senate staff sent questionnaires<sup>25</sup> to each SOE as part of their review of the exemption under the OGSR Act. The vast majority of responses recommended the exemption be reenacted as is. No responses recommended the repeal of the exemption or indicated being aware of any litigation regarding the exemption. Further, House and Senate staff also met with DOS. DOS staff indicated that the agency was unaware of any litigation regarding the exemption and recommended the exemption be reenacted as is.

#### **Effect of the Bill**

The bill removes the scheduled repeal of the exemption for all information concerning 16 or 17-year-old voter registration applicants who pre-register to vote, thereby maintaining the public record exemption for such information held by an agency. The bill also authorizes the disclosure of confidential and exempt voter registration information to another governmental entity, but only if the disclosure is necessary for the receiving entity to perform any required duties that are directly related to election administration.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 97.0585, F.S., relating to public records exemption; information regarding voters and voter registration; confidentiality.

Section 2 provides an effective date of October 1, 2024.

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<sup>20</sup> Section 97.0585(2), F.S.; *see* Art. I, s. 24(a), FLA. CONST. and s. 119.07(1), F.S., for copying requirements.

<sup>21</sup> Chapter 2019-55, L.O.F.

<sup>22</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

<sup>23</sup> Chapter 2019-55, L.O.F.

<sup>24</sup> Section 97.0585(1)(d), F.S.

<sup>25</sup> Open Government Sunset Review Questionnaire, Pre-registered Voters, responses on file with the Ethics, Elections & Open Government Subcommittee.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## 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 spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 17, 2024, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment narrowed the release mechanism for protected voter information, allowing the information to only be shared with governmental entities that need the information for the performance of any required duties that are directly related to election administration.

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