

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: SPB 7010
INTRODUCER: Ethics and Elections Committee
SUBJECT: OGSR/Voter Registration Applicants
DATE: December 13, 2023 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Biehl</u>	<u>Roberts</u>	_____	EE Submitted as Comm. Bill/Fav

I. Summary:

SPB 7010 saves from repeal the current public records exemption making information concerning preregistered voter registration applicants who are 16 or 17 years old confidential and exempt from public records disclosure requirements.

Unless saved from repeal by the Legislature, the exemption will repeal on October 2, 2023. This bill removes the scheduled repeal, thereby continuing the confidential and exempt status of information concerning preregistered voter registration applicants.

This bill also authorizes disclosure of certain information related to voter registration, including that protected by the exemption under review, to another governmental entity if disclosure is necessary for election administration purposes.

The bill takes effect October 1, 2024.

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the 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.²

¹ FLA. CONST. art. I, s. 24(a).

² *Id.* See also, *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that:

[i]t 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.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

[a]ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the OGSR Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The OGSR Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The OGSR Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁹ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- It protects sensitive, personal information, the release of which would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

¹² FLA. CONST. art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

The OGSR Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the OGSR Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are again required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Voter Registration and Preregistration

The Florida Voter Registration Act²⁶ 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 Code²⁷ and must be at least 18 years of age.²⁸ However, a person who is 16 or 17 years old is allowed to preregister and, if his or her application is accepted and complete, may vote in any election occurring on or after that person's 18th birthday.²⁹

The Department of State (DOS) must prescribe by rule a uniform statewide voter registration application³⁰ designed to elicit the following information from the applicant:

- 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.
- Whether the applicant needs assistance in voting.
- Name and address where last registered.
- Last four digits of the applicant's social security number.

²³ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ Part II, ch. 97, F.S.

²⁷ Chapters 97-106, F.S., are cited as "The Florida Election Code." See s. 97.011, F.S.

²⁸ Section 97.041(1)(a)1., F.S.

²⁹ Section 97.041(1)(b), F.S.

³⁰ Section 97.052(1), F.S.; see also r. 1S-2.040, F.A.C., incorporating form DS-DE 39 by reference.

- An indication, if applicable, that the applicant has not been issued a Florida driver license or identification card or a social security number.
- Telephone number (optional).
- Signature of applicant under penalty for false swearing pursuant to law, by which the applicant subscribes to the oath and swears that the information contained in the 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.³¹

The Florida Election Code requires the DOS to adopt rules prescribing minimum standards for nonpartisan voter education,³² which the DOS has completed.³³ 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.³⁴ 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 preregistering to vote.³⁵ The program must be developed in cooperation with the SOE's local school board.³⁶

Public Records Exemptions Related to Voter Information

Current law provides that certain voter registration information held by an agency is confidential and exempt from public records requirements.³⁷ 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 card number of a voter registration applicant or voter.
- All information concerning 16- or 17-year-old voter registration applicants who preregister to vote.³⁸

In addition, the signature of a voter registration applicant or a voter is exempt from the requirement that allows a person to copy a public record.³⁹

³¹ Section 97.052(2), F.S.

³² Section 98.255(1), F.S.

³³ Rule 1S-2.033, F.A.C.

³⁴ Section 98.255(2), F.S.

³⁵ Rule 1S-2.033, F.A.C.

³⁶ *Id.*

³⁷ Section 97.0585, F.S.

³⁸ Section 97.0585(1), F.S.

³⁹ Section 97.0585(2), F.S.

Public Records Exemption under Review

In 2019, the Legislature created the public records exemption for all information concerning 16- or 17-year-old voter registration applicants who preregister to vote.⁴⁰ The 2019 public necessity statement for the exemption provides that:

Information concerning preregistered voter registration applicants 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.⁴¹

Pursuant to the OGSR Act, the exemption will repeal on October 2, 2024, unless reenacted by the Legislature.⁴²

During the 2023 interim, House and Senate staff sent questionnaires⁴³ 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 repeal of the exemption or indicated being aware of any litigation regarding the exemption. In addition, House and Senate staff met with DOS staff, who indicated that the agency was unaware of any litigation regarding the exemption and recommended the exemption be reenacted as is.

III. Effect of Proposed Changes:

The bill removes the scheduled repeal of the public records exemption for all information concerning 16- or 17-year-old voter registration applicants who preregister to vote, thereby continuing the confidential and exempt status of the information. In addition, the bill authorizes disclosure of the preregistered voter information and of other information protected by s. 97.0585(1), F.S., to another governmental entity if disclosure is necessary for election administration purposes.

The bill takes effect October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴⁰ Chapter 2019-55, L.O.F.

⁴¹ *Id.*

⁴² Section 97.0585(1)(d), F.S.

⁴³ Open Government Sunset Review Questionnaire, *Pre-registered Voters*, responses on file with the Senate Committee on Ethics and Elections.

B. Public Records/Open Meetings 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 bill creating or expanding an exemption to the public records requirements. This bill does not create or expand an exemption, so it does not require a two-thirds vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, so it does not require a public necessity statement.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 97.0585, 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.
