

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1591 CS Public Records
SPONSOR(S): Brown
TIED BILLS: HB 1589 **IDEN./SIM. BILLS:** SB 2176 (sim.)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee	5 Y, 3 N	Mitchell	Mitchell
2) Governmental Operations Committee	Withdrawn		
3) State Administration Council	8 Y, 0 N, w/CS	Mitchell	Bussey
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1591 is linked to HB 1589, which sets out requirements for the new statewide voter registration database ("Florida Voter Registration System") that must be operational by January 1, 2006, to comply with the federal mandate in the Help America Vote Act of 2002 ("HAVA").

The bill expands a current public-records exemption that prevents a person from copying a voter's signature and social security number from the voter registration records. The bill makes a voter's signature on any document (i.e., voter registration form, absentee ballot request, absentee ballot mailing envelope, provisional ballot voter's certificate) and social security number confidential and exempt from public records *for all purposes, not just copying*.

Conversely, the bill removes the public-records exemption in s. 97.0585, F.S., that protects the *copying* of a voter's telephone number from voter registration records, for those voters who choose to include that information on their voter registration form (including a telephone number is optional).

The bill also reenacts existing public records exemptions for: 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, information relating to absentee ballot requests, including the date a request was made, the date the absentee ballot was delivered or mailed, the date the ballot was received by the supervisor of elections, and any other information the supervisor deems necessary regarding the request.

Article I, s. 24(c), Fla. Const., requires a two-thirds vote of each house for passage of a newly-created public records or public meetings exemption.

HB 1591 takes effect upon becoming law, provided HB 1589 or similar legislation becomes law.

A STRIKE-ALL AMENDMENT WAS ADOPTED IN THE STATE ADMINISTRATION COUNCIL ON APRIL 20, 2005. SEE AMENDMENTS SECTION BELOW.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain public security – While the bill may not address protection of public security, it does provide increased protection from access to personal identifying information connected to a voter or voter registration applicant, as described below.

B. EFFECT OF PROPOSED CHANGES:

Public Records Laws

Article I, s. 24(a), Fla. Const., expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Section 119.01(1), F.S., provides:

It is the policy of this state that all state, county, and municipal records shall be open for personal inspection by any person.

Article I, s. 24(c), Fla. Const., provides that the Legislature may, by general law, provide exemptions from these requirements. The general law must state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish its purpose.

Passage of Public Records Exemptions

In 2002, HJR 327 was proposed by Representative Carassas and others. HJR 327 amended art. I, s. 24, Fla. Const., to require a two-thirds vote of each house in order to enact an exemption to the requirement that public meetings be open to the public or that a public record be open to copying and inspection.

The joint resolution was approved at the general election in November 2002, and became effective in January 2003.

Thus, HB 1581 must receive a 2/3 vote of each house to be enacted.

Current Situation

Section 97.0585, F.S., currently provides a number of public-records exemptions relating to voter registration. It provides that the following items are confidential and exempt:

- Declinations to register to vote; and
- Information relating to the place where a person registered to vote or where a person updated a voter registration.

Section 97.0585, F.S., also provides that a voter's signature, social security number, and telephone number, presumably as provided in connection with voter registration, may not be *copied* and are exempt from public records for that *limited* purpose.

Section 101.62(3), F.S., currently makes confidential and exempt, for each request for an absentee ballot received by the local supervisor of elections:

- The date the request was made;
- The date the absentee ballot was delivered or mailed;
- The date the ballot was received by the supervisor; and
- Such other information as the supervisor deems necessary.

Such information, however, is made available to, and may be reproduced by, a canvassing board, an election official, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, and registered political committees or registered committees of continuous existence, for political purposes only.

In addition, section 119.0721, F.S., contains a blanket public-records exemption for all social security numbers held by an agency or its agents, employees, or contractors.

Proposed Situation

HB 1591 amends s. 97.0585, F.S., to expand the current public records exemption that prevents a person from copying the voter's signature and social security number from the voter registration records. The bill makes a voter's signature on *any* document (i.e., voter registration form, absentee ballot request, absentee ballot mailing envelope, provisional ballot voter's certificate) and social security number confidential and exempt from public records *for all purposes*, not just copying. The bill removes the current *copying* exemption for a voter's telephone number that are provided on registration forms (telephone numbers may be provided on the voter registration forms).

Finally, the bill reenacts public records exemptions for:

- Voter declinations to register to vote made 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; and
- Information relating to absentee ballot requests, including the date a request was made, the date the absentee ballot was delivered or mailed, the date the ballot was received by the supervisor of elections, and any other information the supervisor deems necessary regarding the request.

The public-records exemption for absentee ballot request information is moved from s. 101.62(3) to s 98.0585, F.S. Absentee ballot request information may be provided to certain parties for political purposes only.

HB 1591 provides for automatic repeal of the exemptions in s. 98.0585, F.S., on October 2, 2010, unless reenacted by the Legislature.

If enacted by a two-thirds vote of each chamber, the bill takes effect upon becoming law,
provided that HB 1591 or similar legislation creating the voter registration system is also enacted.

B. Private Sector Impact:

C. SECTION DIRECTORY:

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:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

Article I, s. 24(a), Fla. Const., sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Art. I, s. 24, Fla. Const. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A STRIKE-ALL AMENDMENT WAS ADOPTED IN THE STATE ADMINISTRATION COUNCIL ON APRIL 20, 2005.

The strike-all amendment accomplishes the following with regard to voters and voter registration:

- There are new exemptions for the Florida Driver's License number or Florida identification number of voter registration applicants and voters.
- Social security numbers of voter registration applicants and voters remain exempt.
- Voter phone numbers, absentee ballot request information and voter signatures on absentee and provisional ballots are no longer exempt.
- The signature of a voter or voter registration applicant may not be copied and is exempt for that purpose.
- Declinations to register to vote made pursuant to s. 97.057 and s. 97.058 remain exempt.
- Information relating to the place where a person registered to vote or where a person updated a voter registration remains exempt.
- The exemption for absentee ballot request information was removed.
- A "retroactive application" clause was added which provides that s. 97.085 applies to voter "information held by an agency before, on, or after the effective date" of the exemptions.
- Language is included in the public necessity statement to explain the need for voter information in the database.