

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: CS/SB 1072

INTRODUCER: Ethics and Elections Committee and Senator Hutson

SUBJECT: Public Records/Voter Registration Information

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1072, is a public records exemption bill that is tied to CS/SB 1070. Committee Substitute for Senate Bill 1070 authorizes the Secretary of State (“Secretary”) to enter into agreements to share information or data with other states to maintain the integrity of the statewide Florida Voter Registration System (“FVRS”), as he or she deems necessary. CS/SB 1070 directs the Secretary to use that data to identify registered voters or voter registration applicants that would be potentially ineligible to vote, and authorizes the Secretary to share such information with the supervisors of elections and other persons or organizations responsible for maintaining the statewide database.

This bill creates a public record exemption for the interstate information and data received by the Secretary. Such information and data is confidential and exempt from public record requirements, if it is confidential in its state of origin.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill’s effective date is contingent upon, and concurrent with, passage of CS/SB 1070; which, if passed, will take effect on July 1, 2017.

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

II. Present Situation:

Public Records Law

The Florida 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

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., the “Public Records Act,” constitutes the main body of public records laws.⁴ The Public Records Act states that it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person and that providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). *See also, 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 records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” as “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.” 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 the 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 acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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 *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.¹³ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation of a substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁴ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁵ If the exemption is reenacted 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 sunset, the previously exempt records will remain exempt unless otherwise provided for by law.¹⁶

Public Record Exemption for Voter Registration Information

Voter registration information (whether received from an applicant, another state or local governmental agency, or out-of-state agencies including election officials) once submitted to a governmental agency in Florida is public record pursuant to Chapter 119, Fla. Stat., unless an applicable exemption exists.

Current law provides a public records exemption for certain information held by an agency¹⁷ for purposes of voter registration.¹⁸ Specifically, the following information is confidential and exempt from public records requirements:

- All 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.

important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.
¹³ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The legislature currently follows the OGSR process, though it is not required to continue to do so. The Florida Supreme Court has found that one Legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁴ Section 119.15(3), F.S.

¹⁵ FLA. CONST., art. I, s. 24(c).

¹⁶ Section 119.15(7), F.S.

¹⁷ Section 119.011(2), F.S., defines “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 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 acting on behalf of any public agency.”

¹⁸ Section 97.0585, F.S.

- The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

Further, the signature of a voter registration applicant or a voter is exempt from *copying* requirements.¹⁹

Also, the law allows voters who fall into a number of high-risk professional classes to request that certain information such as their address and phone numbers and dates of birth be exempt for themselves and their spouses and children.²⁰

Finally, the "voter stalking exemption" that the Legislature adopted in 2010 exempts the names, addresses, and telephone numbers of actual or threatened victims who participate in the Attorney General's Address Confidentiality Program for Victims of Domestic Violence.²¹

CS/SB 1070 (2017)

CS/SB 1070 authorizes the Secretary of State, as he or she deems necessary, to enter into agreements or join nongovernmental entities whose composition is solely made up of state elections officials to share information or data *with other states* to maintain the statewide voter registration system. It directs the Secretary to use that data to identify registered voters or voter registration applicants that would be potentially ineligible to vote based on current law.

CS/SB 1070 also provides that all states or entities, including Florida, that are a part of such a data sharing group shall maintain the confidentiality of information or data given as part of the agreement if that information or data was confidential in its state of origin.

III. Effect of Proposed Changes:

CS/SB 1072, which is contingent on the passage of CS/SB 1070, creates a public record exemption for interstate information and data received by the Department of State pursuant to an interstate agreement, or received from a nongovernmental entity whose membership is solely composed of state elections officials. Specifically, it provides that information or data from another state which is confidential or exempt pursuant to the laws of that state is also confidential and exempt from public record requirements under Florida law.

The bill contains an Open Government Sunset Review Act clause specifying that this public records exemption will be repealed unless saved by reenactment of the Legislature before October 2, 2022.

The bill's effective date is contingent upon, and concurrent with, passage of CS/SB 1070; which, if passed, will take effect on July 1, 2017.

¹⁹ Section 97.0585(2), F.S.

²⁰ Section 119.071(4)(d)1., F.S.

²¹ Section 741.4651, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

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 98.075 of the Florida Statutes.

IX. Additional Information:A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Ethics and Elections on April 4, 2017:**

The Committee Substitute is different from the original bill in that it:

- Rewords (though it does not change the substantive effect of the bill) and moves the public records exemption from an unnumbered section of the Florida Statutes to s. 98.075, F.S.; and,

- Provides that, pursuant to the Open Government Sunset Review Act, the bill will stand repealed on October 2, 2022, unless reviewed and saved from repeal by reenactment of the Legislature.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
