

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 761 Pub. Rec./Voters and Voter Registration
SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Stevenson
TIED BILLS: IDEN./SIM. BILLS: SB 532

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	10 Y, 0 N, As CS	Toliver	Harrington
2) Public Integrity & Ethics Committee		Poreda	Rubottom
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Florida Voter Registration Act 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 and must be at least 18 years of age, a citizen of the United States, a legal resident of Florida, and a legal resident of the county in which the person seeks to be registered. A person who is 16 or 17 is allowed to preregister and, if their application is accepted and complete, may vote in any election occurring on or after that person's 18th birthday.

Current law requires that certain voter registration information held by an agency remain confidential and exempt from public record requirements. 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; and
- The social security number, driver license number, and Florida identification number of a voter registration applicant or voter.

The bill expands the public record exemption to make the address of legal residence, date of birth, telephone number, and email address of a voter, voter registration applicant, or preregistered voter registration applicant held by an agency confidential and exempt from public record requirements. However, this confidential and exempt information must be made available to the following entities:

- The individual whose information was made confidential and exempt;
- A canvassing board or an election official in his or her official capacity; and
- 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, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public 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. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.²

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act³ 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:⁴

- 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.

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.⁵ Specified questions must be considered by the Legislature during the review process.⁶

Voter Registration

The Florida Voter Registration Act⁷ 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 Code⁸ and must be at least 18 years of age, a citizen of the United States, a legal resident of Florida, and a legal resident of the county in which the person seeks to be registered.⁹ A person who is 16 or 17 is allowed to preregister and, if their application is accepted and complete, may vote in any election occurring on or after that person's 18th birthday.¹⁰

¹ FLA. CONST. art. I, s. 24(c).

² FLA. CONST. art. I, s. 24(c).

³ s. 119.15, F.S.

⁴ s. 119.15(6)(b), F.S.

⁵ s. 119.15(3), F.S.

⁶ Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁷ Part II, ch. 97, F.S.

⁸ Chapters 97-106, F.S., are cited as The Florida Election Code.

⁹ Section 97.041(1)(a), F.S.

¹⁰ Section 97.041(1)(b), F.S.

The Department of State must prescribe by rule a uniform statewide voter registration application.¹¹ The application must be designed to elicit the following information from the applicant:

- The applicant's name, date of birth, address of legal residence;
- 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;
- Florida driver license number or the 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 applicant has been convicted of a felony, and, if convicted, has had his or her civil rights restored; and
- 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.¹²

Notwithstanding all the information required to be on the voter registration application, a voter registration will be considered complete if it contains the following information:

- The applicant's name, address of legal residence, and date of birth.
- A mark in the checkbox affirming the applicant is a citizen of the United States.
- The applicant's current and valid Florida driver license number or identification card number or, if the applicant does not have a Florida driver license or identification card, the last four numbers of the applicant's social security number.¹³
- A mark in the checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, the applicant has had his or her civil rights restored.
- A mark in the checkbox affirming that the applicant has not been adjudicated mentally incapacitated with respect to voting or that, if so adjudicated, the applicant has had his or her right to vote restored.
- The applicant's signature or a digital signature transmitted by the Department of Highway Safety and Motor Vehicles.¹⁴

¹¹ Section 97.052(1), F.S.; Fla. Admin. Code R. 1S-2.040 incorporating form DS-DE 39.

¹² Section 97.052(2), F.S.

¹³ If an applicant has not been issued a current and valid Florida driver license, Florida identification card, or social security number, the applicant must affirm this fact in the manner prescribed in the uniform statewide voter registration application. Section 97.053(5)(a)5.b., F.S.

¹⁴ Section 97.053(5)(a), F.S.

Public Record Exemption

Current law requires that certain voter registration information held by an agency¹⁵ remain confidential and exempt¹⁶ from public record requirements.¹⁷ 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; and
- The social security number, driver license number, and Florida identification number of a voter registration applicant or voter.

In addition, the signature of a voter registration applicant or a voter is exempt from the copying requirements of s. 119.07(1), F.S.

Effect of the Bill

The bill expands the public record exemption for certain voter registration information to make the address of legal residence, date of birth, telephone number, and email address of a voter, voter registration applicant, or preregistered voter registration applicant held by an agency confidential and exempt from public record requirements. However, this exempt information must be made available to the following entities:

- The individual whose information was made confidential and exempt;
- A canvassing board or an election official in his or her official capacity; and
- 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 a public necessity statement as required by the State Constitution, specifying that a voter or voter registration applicant's address, date of birth, telephone number, and email address is personal and sensitive and could be misused by a dishonest person to commit identity theft. The public necessity statement also provides that this personal information could result in voter fraud if a person other than the voter requests a vote-by-mail ballot. Additionally, the protection of those persons 16 or 17 years of age who have preregistered to vote is necessary as minors are more vulnerable members of society and, if their personal identifying information is released, their information could be used to solicit, harass, stalk, or intimidate those individuals.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1 amends 97.0585, F.S., relating to public records exemptions for information concerning voters and voter registration applicants.

Section 2 provides a public necessity statement.

¹⁵ Section 119.011, 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.

¹⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (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 1994); *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 anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁷ Section 97.0585, F.S.

Section 3 provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

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 newly created public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption for certain information related to voters and voter registration applicants. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provided that information related to preregistered voter registration applicants be made available to the applicants themselves, a canvassing board or election official, or, for political purposes only, a political party or official thereof, a candidate, an elected official, or a registered political committee. The bill also made a technical change by replacing the phrase "legal residential address" with "address of legal residence," as the latter is defined in the Florida Election Code.

The analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.