

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 87 Pub.Rec./Statewide Voter Registration System

SPONSOR(S): Spano

TIED BILLS: HB 85 **IDEN./SIM. BILLS:** SB 278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	12 Y, 0 N	Toliver	Harrington
2) Public Integrity & Ethics Committee			

SUMMARY ANALYSIS

The Department of State (Department) is headed by the Secretary of State (Secretary) who serves as Florida's chief election officer. Current law charges the Secretary with a variety of responsibilities in his or her capacity as chief election officer, including administering a statewide voter registration system. The voter registration system is the official list of registered voters in the state and contains the name and registration information of every legally registered voter in Florida. HB 85, which is tied to this bill, allows the Department to enter into agreements or become a member of a nongovernment entity for the purpose of sharing information with other states to maintain the statewide voter registration system.

The bill, which is linked to the passage of HB 85, creates a public record exemption for information received by the Department, pursuant to an interstate agreement or pursuant to its membership in a nongovernmental entity, from another state that is confidential or exempt pursuant to the laws of that state. 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 statement of public necessity as required by the Florida Constitution.

The bill may have a minimal fiscal impact on state and local governments. See Fiscal Comments.

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 creates a public record exemption for certain information received by the Department; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The Florida Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.¹ The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.² The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.³ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁴

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁵ provides that a public record 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 government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.⁶

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁷

Department of State and Voter Registration List Maintenance

The Department of State (Department)⁸ is headed by the Secretary of State (Secretary), who serves as Florida's chief election officer. The Secretary is charged with a variety of responsibilities in his or her capacity as Florida's chief election officer, including administering a statewide voter registration system (system).⁹ The system is the official list of registered voters in the state and is required to contain the name and registration information of every legally registered voter in Florida.¹⁰ Florida law currently requires supervisors of elections (supervisor) to conduct voter registration list maintenance at least every odd-numbered year to protect the integrity of the electoral process.¹¹ Each supervisor is authorized to use certain information that indicates that a voter has changed addresses in this list maintenance effort.¹² In addition to those efforts, there are other methods used to determine if a voter listed in the system is ineligible.¹³ The Department, for instance, identifies deceased persons, persons

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(c).

³ *Id.*

⁴ *Id.*

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.15(3), F.S.

⁸ Section 20.10(1), F.S.

⁹ Section 97.012, F.S.

¹⁰ Section 98.035(2), F.S.

¹¹ Section 98.065(3), F.S.

¹² Section 98.065(2), F.S.

¹³ Section 98.075, F.S.

adjudicated of mental incapacity, persons convicted of a felony, and other ineligible voters contained in the system.¹⁴ The supervisor¹⁵ is then notified of these findings and, after notifying an affected voter and giving him or her a chance to respond,¹⁶ makes a final determination regarding voter eligibility.¹⁷

Public Record Exemption for Voter Registration Information

Current law provides a public record exemption for certain information held by an agency¹⁸ for purposes of voter registration.¹⁹ Specifically, the following information is confidential and exempt²⁰ 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; and
- The social security number, driver license number, and Florida identification number of a voter applicant or voter.²¹

In addition, the signature of a voter registration applicant or a voter is exempt from copying requirements.²²

HB 85 (2018)

HB 85 allows the Department to enter into interstate agreements or become a member in a nongovernmental entity whose membership is composed solely of state government election officials to share information with other states for the purpose of maintaining the statewide voter registration system.

Effect of the Bill

The bill, which is linked to the passage of HB 85, creates a public record exemption for information received by the Department, pursuant to an interstate agreement or pursuant to its membership in a nongovernmental entity, from another state that is confidential or exempt in its state of origin. The bill requires the Department to share that information with the supervisors to conduct voter registration list maintenance. It 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, which specifies that without the public record exemption, the Department will be unable to receive information from other states that might otherwise be confidential or exempt pursuant to the laws of those states, thus, impairing the ability of the Department and supervisors to maintain accurate voter rolls.

¹⁴ *Id.*

¹⁵ Supervisors are also able to remove the name of a voter based on evidence without the Department having notified them in some circumstances. Section 98.075, F.S.

¹⁶ No notification is given to those determined to be deceased. Section 98.075(3), F.S.

¹⁷ Section 98.075(7), F.S.

¹⁸ 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 purposes of chapter 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.

¹⁹ Section 97.0585, F.S.

²⁰ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 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 WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); *Op. Att’y Gen. Fla. 85-692* (1985).

²¹ Section 97.0585(1), F.S.

²² Section 97.0585(2), F.S.

B. SECTION DIRECTORY:

Section 1 creates s. 98.075(2)(b)4., F.S., relating to voter registration records maintenance activities.

Section 2 provides a public necessity statement.

Section 3 provides an effective date that is contingent upon the passage of HB 85 or similar legislation.

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 may have a minimal fiscal impact on the Department and supervisors because staff responsible for complying with public record requests may require training related to the creation of the public record exemption. In addition, the Department and supervisors could incur costs associated with redacting confidential or exempt records prior to release. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the Department and supervisors.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 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 creates a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida 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 creates a public record exemption for information received by the Department that is confidential in its state of origin to facilitate information sharing with other states. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption 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

None.