

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 Governmental Oversight and Accountability Committee

BILL: CS/CS/SB 2188

INTRODUCER: Governmental Oversight and Accountability Committee and Ethics and Elections Committee

SUBJECT: Public Records/Voters and Voter Registration

DATE: April 6, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	Fav/CS
2.	Naf	Wilson	GO	Fav/CS
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill is the result of an Open Government Sunset Review conducted by the Ethics and Elections Committee.

Florida residents can register to vote by mailing or hand-delivering a voter registration application to various locations. In addition to the applicant's name, the voter application requests, in part, the following: date of birth, name and address where last registered to vote, last four digits of the social security number, Florida driver's license number or identification number from a Florida-issued identification card, and signature of the applicant.

Current law provides that the following information held by an agency is confidential and exempt from public-records requirements:

- All declinations to register to vote at a voter registration information or driver's license office.
- Information relating to the place where a person registered to vote or updated a voter registration.

- The social security number, driver's license number, and Florida ID number of a voter registration applicant or voter.
- Current law also provides that the signature of a voter or voter registration applicant is exempt from the copy requirements found in the public-records laws.

These exemptions are subject to review and repeal under the Open Government Sunset Review Act and will expire on October 2, 2010, unless saved from repeal through reenactment by the Legislature. This bill reenacts those exemptions and makes clarifying technical changes.

The bill also creates a public-records exemption for specified personal information of victims of stalking or aggravated stalking that provides protection in the same manner and under the same circumstances as participants in the Address Confidentiality Program for Victims of Domestic Violence. Because this bill creates a new exemption, it requires a two-thirds vote of each house of the Legislature for passage.

The bill amends section 97.0585 of the Florida Statutes, and saves the *current* provisions of that section from automatic repeal under Florida's Open Government Sunset Review Act by repealing s. 3, ch. 2005-279, Laws of Florida.

II. Present Situation:

Florida's Public-Records Laws

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24(a), art. I, of the State Constitution, provides that:

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.

The Public Records Law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record¹ must permit the record to be inspected and

¹ Section 119.011(12), F.S., defines "public records" to include "all documents, papers, letters, maps, books, tapes, photographs, film, 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

examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency² records are to be available for public inspection.

Section 119.011(12), F.S., defines the term “public record” to include 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. 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 “intended to perpetuate, communicate, or formalize knowledge.”³ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁴

Only the Legislature is authorized to create exemptions to open government requirements.⁵ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption⁷ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.⁸

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.⁹ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act¹¹ provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the

of official business by any agency.”

² Section 119.011(2), F.S., defines “agency” as “...any state, county, district, authority, or municipal officer, department, division, 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.”

³ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁴ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁵ Article I, s. 24(c) of the State Constitution.

⁶ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁷ Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁸ Section 24(c), art. I of the State Constitution

⁹ Attorney General Opinion 85-62, August 1, 1985.

¹⁰ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla. 1991).

¹¹ Section 119.15, F.S.

exemption is no broader than necessary to meet the public purpose it serves.¹² An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.¹³ An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which ... would be defamatory ... or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which ... would injure the affected entity in the marketplace.¹⁴

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.¹⁵

Voter Registration in Florida

Florida residents can register to vote by mailing or hand-delivering a voter registration application to various locations, including the office of the voter's supervisor of elections, the Division of Elections within the Department of State, a driver license office, a voter registration agency,¹⁶ or an armed forces recruitment office.¹⁷ In addition to the applicant's name, the voter application requests, in part, the following: date of birth, address and county of legal residence, mailing address if different, 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 social security number, Florida driver's license number or identification number from a Florida-issued ID card, and signature of the applicant.¹⁸

Florida Voter Registration System

The Florida Voter Registration System (FVRS) contains the official registration information of every legally registered voter in the State. There are at least 11.2 million active registered voters. Since its implementation in January 2006, the FVRS is considered one of the most comprehensive statewide databases. It includes, but is not limited to, the voter's name, date of

¹² Section 119.15(6)(b), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 119.15(6)(a), F.S.

¹⁶ Section 97.021(40), F.S., defines "voter registration agency" to mean "any office that provides public assistance, any office that serves persons with disabilities, any center for independent living, or any public library."

¹⁷ Section 97.053(1), F.S.

¹⁸ *See s. 97.052(2)(a) – (t), F.S.*

birth, former and maiden names, addresses, social security number, driver's license number or state identification number, signature, and information as to where a person registered to vote or updated his or her registration record. Under Florida's public-records laws, all of this electronic information is a public record with the exception of that information made confidential and exempt.¹⁹

Public-Records Exemption Under Review

Prior to 2005, current law provided a public record exemption for declinations to register to vote at a voter registration agency and the location where a person registered or updated a voter registration.²⁰ Use of the declination was limited to voter registration purposes, as required by federal law.

The exemption also provided that a voter's signature, social security number, and telephone number were exempt from the copying requirements of the Public Records Act²¹ and s. 24(a), art. I of the State Constitution; however, such information was subject to public inspection.²²

In 2005, the public record exemption was amended and, as such, currently provides that the following information held by an agency²³ is confidential and exempt²⁴ from public records requirements and may be used only for voter registration purposes:

- All declinations to register to vote at a voter registration agency or driver license office.
- Information relating to the place where a person registered to vote or updated a voter registration.
- The social security number, driver's license number, and Florida ID number of a voter registration applicant or voter.²⁵

Further, the section provides that the signature of a voter or voter registration applicant is exempt from the copying requirements found in the public records laws.²⁶

¹⁹ Email from Maria Matthews, Assistant General Counsel for the Department of State, August 11, 2009 (on file with the Governmental Affairs Policy Committee).

²⁰ Section 97.0585, F.S. (2004)

²¹ Chapter 119, F.S., often is referred to as the Public Records Act.

²² Section 97.0585, F.S. (2004)

²³ 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."

²⁴ 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 the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

²⁵ Section 97.0585(1)(a) – (c), F.S.

²⁶ Section 97.0585(2), F.S.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.²⁷

Public-Records Exemptions for Information Relating to Stalking Victims

Current law provides a general public-records exemption for victims of “*aggravated stalking*” and “*harassment*;²⁸ there is no exemption for victims of the crime of “*stalking*” under s. 784.048(2), F.S., that results from acts of “*following*” or “*cyberstalking*” a victim.²⁹ This general exemption a victim’s address and telephone number are confidential and exempt from public-records requirements for a period of 5 years upon the victim’s written request of each agency possessing such information, provided the request is accompanied by “official verification that an applicable crime has occurred” (i.e., a police report).

Current law provides a *specific* public-records exemption for the voting and voter registration records of victims of stalking or aggravated stalking only if the stalking involves domestic violence.³⁰

Address Confidentiality Program for Victims of Domestic Violence and Related Public-Records Exemption

The Address Confidentiality Program for Victims of Domestic Violence (ACP or program) was established in 1998 and is administered by the Office of the Attorney General.³¹ The purpose of the program is to:

- Enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence;
- Encourage interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence; and
- Allow state and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address.³²

Any victim of domestic violence who relocates to an address unknown to his or her abuser is eligible to participate in the program. Each participant is assigned a substitute address that includes a street address, an ACP identification code, a post office box number, a Florida city,

²⁷ Section 3 of chapter 2005-279, L.O.F.

²⁸ Section 119.071(2)(j)1., F.S.

²⁹ Section 784.048(2), F.S., provides that the criminal offense of “*stalking*” results from a person willfully or maliciously *following, harassing, or cyberstalking* another person. The general public records exemption in s. 119.071(2)(j), F.S., provides confidentiality protection for victims of “*harassment*” --- only one of three possible acts that can constitute the offense of “*stalking*.”

³⁰ Section 741.465, F.S., exempts from disclosure (for a period of 4 years) the name, address, and telephone of participants in the Address Confidentiality Program for Victims of Domestic Violence contained in voter registration and voting records held by the Department of State and supervisors of elections. Sections 741.465(2), 741.403(3), F.S. The term “*domestic violence*” embraces the crimes of stalking and aggravated stalking involving family or household members. Section 741.28, F.S.

³¹ Chapter 98-404, L.O.F., codified as ss. 741.401 – 741.409, F.S.

³² Section 741.401, F.S.

and a zip code. The address has no relation to the participant's actual location. The Division of Victim Services and Criminal Justice Programs serves as legal agent for receipt of mail and service of process, and forwards first-class mail to the participant's actual location.

Current law provides provisions for ACP participants who desire to vote. The law allows a program participant to vote by absentee ballot, but only after providing his or her physical address. The physical address of the participant is necessary in order to determine the specific ballot to be mailed to the participant. The law further prohibits the supervisor of elections from disclosing the participant's name, address, or telephone number in any list of registered voters available to the public.³³ Thus, the participant can vote in the elections for which she is otherwise qualified, while information that might be used to locate him or her remains protected.

When the program was created in 1998, the Legislature also enacted a public record exemption for the addresses, telephone numbers, and social security numbers of ACP participants.³⁴ The Legislature authorized the release of the information under the following circumstances:

- To a law enforcement agency, for purposes of executing an arrest warrant;
- Pursuant to court order; or
- Upon cancellation of a participant's certification in the program.

In 2003, the public-records exemption for the program was reviewed, pursuant to the Open Government Sunset Review Act, and the public-records exemption for the addresses, telephone numbers, and social security numbers of ACP participants was reenacted with modification.³⁵ Because the bill properly created the exemption for such information held by the supervisor of elections, the exemption was again made subject to the Open Government Sunset Review Act and was scheduled to repeal on October 2, 2008, unless reviewed and reenacted by the Legislature.³⁶

In July 2003, the Florida Attorney General issued an opinion in response to the following question:

Is a witness's name and address on the back of an absentee ballot confidential and exempt from disclosure when the voter is a participant in the [ACP]?³⁷

The Attorney General noted that, pursuant to s. 741.465(2), F.S., the names, addresses, and telephone numbers of ACP participants contained in voter registration records and held by the supervisor of elections are exempt from public disclosure. The Attorney General refused, however, to infer that the exemption extended to the signatures and addresses of witnesses on an

³³ Section 741.406, F.S.

³⁴ Chapter 98-405, L.O.F., codified as s. 741.465, F.S.

³⁵ The separate statutory provision prohibiting the Office of the Attorney General from disclosing such information was repealed and replaced with the specification that the reenacted public record exemption applied to the information held by the Office of the Attorney General. The separate statutory provision prohibiting the supervisor of elections from disclosing the information also was repealed and replaced with a new subsection that explicitly provided that the information was exempt if contained in voter registration records held by the supervisor of elections. (Chapter 2003-185, L.O.F.)

³⁶ Section 4 of chapter 2003-185, L.O.F.

³⁷ Florida Attorney General Advisory Legal Opinion, Number AGO 2003-35, July 31, 2003.

absentee ballot. The Attorney General acknowledged the possibility that the release of a witness's name or address could lead to the location of a program participant, but insisted that the issue was one for legislative determination.³⁸

In 2005 the Legislature amended the exemptions currently under review, to clarify that the names, addresses, and telephone numbers of ACP participants contained not only in voter registration records, but in *all* voting records, held by either the supervisor of elections or by the Department of State, are exempt³⁹ from public-records requirements.⁴⁰ The legislation provided that the public record exemption, as amended, would be subject to review under the Open Government Sunset Review Act and would stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

III. Effect of Proposed Changes:

This bill removes the repeal date, thereby reenacting the public-records exemptions. The bill also deletes superfluous language describing the exempt records and makes a grammatical change to the voter signature copying exemption.

The bill also creates a public-records exemption for the names, addresses, and telephone numbers of victims of stalking or aggravated stalking. The bill provides that protection is afforded to those victims in the same manner and under the same circumstances as participants in the Address Confidentiality Program for Victims of Domestic Violence.

The bill provides a statement of public necessity for the new exemption and provides that the exemption is subject to review and repeal under the Open Government Sunset Review Act on October 2, 2015.

Other Potential Implications:

Were the legislature to fail to reenact section 97.0585, F.S., declinations to register to vote, the place where a person registered to vote, and, *arguendo*, the place where a person *updated* a voter registration would still be protected from disclosure by federal law. Also, the voter or voter registrant's social security number would be confidential and exempt under the general public-records exemption in section 119.071(5)(a), F.S. Driver's license numbers, Florida ID numbers, and signatures, however, would no longer be exempt from public-records requirements.

³⁸ *Id.*

³⁹ 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 the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

⁴⁰ Chapter 2005-279, L.O.F.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly-created public-records exemption. This bill creates a public-records exemption; therefore, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), art. I of the State Constitution requires a bill creating a public-records exemption to contain a statement of public necessity. This bill creates a public-records exemption; therefore, it contains a public necessity statement.

Subject Requirement

Section 24(c), art. I of the State Constitution requires the Legislature to create public-records exemptions in legislation separate from any substantive provisions. This bill appears to comply with that requirement.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the Attorney General may incur an indeterminate cost to process and maintain information relating to victims of stalking in the Address Confidentiality Program for Victims of Domestic Violence.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 March 18, 2010

The committee substitute differs from the original bill in that it: creates a renewable, two-year exemption from public-records requirements for the name, address, and telephone number of a stalking victim, or someone living with a stalking victim, contained in voter registration and voting records held by the Department of State and supervisor of elections, upon the filing of a prescribed sworn statement.

CS by Governmental Oversight and Accountability on April 6, 2010:

The CS differs from the CS by Ethics and Elections in that it:

- Creates a public-records exemption for the names, addresses, and telephone numbers of victims of stalking or aggravated stalking, and provides that protection is afforded to those victims in the same manner and under the same circumstances as participants in the Address Confidentiality Program for Victims of Domestic Violence.
- Does not include implementation procedures imposed upon the Department of State and does not specify the creation of the form; and
- Reorganizes the bill to codify the Open Government Sunset Review language in statute after the newly-created exemption.

- B. **Amendments:**

None.