

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EEG 23-03 OGSR/Statewide Voter Registration System

SPONSOR(S): Ethics, Elections & Open Government Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee		Villa	Toliver

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Department of State (DOS) 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 chief election officer, including administering the statewide voter registration system. The Florida 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. Florida's supervisors of elections (supervisors) are required to conduct voter registration list maintenance at least once each year to protect the integrity of the electoral process.

In 2018, the Legislature authorized DOS to become a member of a nongovernmental entity whose membership is composed solely of election officials of state governments and the District of Columbia for the purpose of sharing and exchanging information to maintain the statewide voter registration system. In 2019, Florida joined such an organization, the Electronic Registration Information Center (ERIC). ERIC allows member states to crosscheck voter registration data with 30 other member states and the District of Columbia. ERIC's membership agreement requires members to maintain the confidentiality of information received.

Current law provides a public record exemption for voter registration information received by DOS, pursuant to its membership in a nongovernmental entity – ERIC – from another state or the District of Columbia that is confidential or exempt in its jurisdiction of origin. The exemption requires DOS to share the protected information with supervisors to conduct voter registration list maintenance.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2023, if this bill does not become law.

The bill does not appear to have a fiscal impact on state government or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The OGSR Act 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 broader than is necessary to meet one of the following purposes:

- 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.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Department of State and Voter Registration List Maintenance

The Department of State (DOS)⁵ 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, also known as the Florida Voter Registration System (FVRS).⁶ The FVRS is the official list of registered voters in the state and contains the registration information of every legally registered voter in Florida.⁷

Current law requires supervisors of elections (supervisors) to conduct voter registration list maintenance at least once each year to protect the integrity of the electoral process.⁸ Each supervisor is required to use certain procedures that indicate a voter has changed addresses as part of this list maintenance effort.⁹ In addition to those efforts, there are other methods used to determine if a voter listed in the FVRS is ineligible.¹⁰ DOS, for instance, identifies duplicate registrations, deceased persons, persons adjudicated of mental incapacity, persons convicted of a felony, and other ineligible voters contained in the system.¹¹ The supervisor is then notified of these findings and, after notifying an

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ Section 20.10(1), F.S.

⁶ Section 97.012, F.S.

⁷ Section 98.035(2), F.S.

⁸ Section 98.065(4), F.S.

⁹ Section 98.065(2), F.S.

¹⁰ Section 98.075, F.S.

¹¹ *Id.*

affected voter and giving him or her a chance to respond, makes a final determination regarding voter eligibility.¹²

Public Record Exemption for Voter Registration Information

Current law provides a public record exemption for certain information held by an agency¹³ for purposes of voter registration.¹⁴ Specifically, the following information is confidential and exempt¹⁵ 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;
- The social security number, driver license number, and Florida identification number of a voter applicant or voter; and
- All information concerning preregistered voter registration applicants who are 16 or 17 years of age.¹⁶

In addition, the signature of a voter registration applicant or a voter is exempt from copying requirements.¹⁷

Electronic Registration Information Center

In 2018, the Legislature passed CS/HB 85,¹⁸ which authorized DOS to become a member of a nongovernmental entity whose membership is composed solely of election officials of state governments and the District of Columbia to share information for the purpose of maintaining the statewide voter registration system.¹⁹ The nongovernmental entity may not be operated or controlled by the Federal Government or any entity acting on behalf of the Federal Government.²⁰ In addition, DOS may only share confidential and exempt information if each member agrees to maintain the confidentiality of the information or the bylaws require each member and the entity itself to maintain the confidentiality of the information.²¹

In 2019, Florida joined the Electronic Registration Information Center (ERIC).²² ERIC is a non-profit organization comprised of 30 states and the District of Columbia that was created to “assist states in improving the accuracy of America’s voter rolls and increasing access to voter registration for all eligible citizens.”²³ ERIC is governed by a board of directors consisting solely of the chief election

¹² Section 98.075(7), F.S.

¹³ “Agency” means 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 ch. 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. Section 119.011(2), F.S.

¹⁴ Section 97.0585, F.S.

¹⁵ There is a difference between records the Legislature designates 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. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 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 Op. Att’y Gen. Fla. 04-09 (2004).

¹⁶ Section 97.0585(1), F.S.

¹⁷ Section 97.0585(2), F.S.

¹⁸ Codified as s. 98.075(2)(b), F.S.

¹⁹ Section 98.075(2)(b)1., F.S.

²⁰ Section 98.075(2)(b)3., F.S.

²¹ Section 98.075(2)(b)2., F.S.

²² Florida Executive Office of the Governor, *Governor Ron DeSantis Announces Florida to Join the Electronic Registration Information Center to Enhance Election Security & Ensure Accurate Voter Rolls*, (August 21, 2019), <https://www.flgov.com/2019/08/21/governor-ron-desantis-announces-florida-to-join-the-electronic-registration-information-center-to-enhance-election-security-ensure-accurate-voter-rolls/> (last visited February 6, 2023).

²³ Electronic Registration Information Center (ERIC) FAQ, available at https://ericstates.org/wp-content/uploads/2023/01/ERIC_FAQS_V1.3_01-20-2023.pdf (last visited February 6, 2023).

officials of member states or their designee.²⁴ ERIC membership gives states the ability to crosscheck voter registration data with the other member states²⁵ in order to identify duplicate registrations and review other records regarding voters who have moved to, or passed away in, another state.²⁶

ERIC creates several voter list maintenance reports for use by member states, which utilize data matching software to compare data submitted by member states as well as data received from other sources, including:²⁷

- Deceased Report: Identifies voters who have died using voter registration data and Social Security death data.
- Cross-State Movers Report: Identifies voters who appear to have moved from one ERIC state to another.
- In-State Movers Report: Identifies voters who appear to have moved within a member state.
- Duplicate Report: Identifies voters with duplicate registrations in the same state.
- National Change of Address Report: Identifies voters who have moved using official data received through ERIC-derived licenses from the U.S. Postal Service.

Once DOS became a member of ERIC, the Department of Highway Safety and Motor Vehicles was required to provide driver license or identification card information to DOS for the purpose of sharing and exchanging voter registration information with ERIC.²⁸ Additionally, DOS is required to submit an annual report to the Governor and Legislature describing the terms of membership and providing information on the number of voters removed from the voter registration system as a result of membership and the reasons for removal.²⁹

ERIC's membership bylaws require members states to maintain the confidentiality of information received.³⁰

Public Record Exemption under Review

In 2018, the Legislature created a public record exemption for voter registration information received by DOS pursuant to its membership in a nongovernmental entity – such as ERIC – from another state or the District of Columbia that is confidential or exempt in its jurisdiction of origin.³¹ The exemption requires DOS to share the protected information with supervisors to conduct voter registration list maintenance.³²

The 2018 public necessity statement³³ for the exemption provides that:

Without the public records exemption, the department will be unable to receive information from other states or the District of Columbia which might otherwise be confidential or exempt pursuant to the laws of those jurisdictions, which would impair the ability of the department and supervisors of elections to maintain

²⁴ *Id.*

²⁵ As of February 2023, the member states are: Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

²⁶ *Id.* See also Florida Executive Office of the Governor, *Governor Ron DeSantis Announces Florida to Join the Electronic Registration Information Center to Enhance Election Security & Ensure Accurate Voter Rolls*, (August 21, 2019), <https://www.flgov.com/2019/08/21/governor-ron-desantis-announces-florida-to-join-the-electronic-registration-information-center-to-enhance-election-security-ensure-accurate-voter-rolls/> (last visited February 6, 2023).

²⁷ Electronic Registration Information Center (ERIC) FAQ, available at https://ericstates.org/wp-content/uploads/2023/01/ERIC_FAQS_V1.3_01-20-2023.pdf (last visited February 6, 2023).

²⁸ Section 98.075(2)(b)4., F.S.

²⁹ Section 98.075(2)(b)5., F.S.

³⁰ Electronic Registration Information Center, Inc., *Bylaws*, https://ericstates.org/wp-content/uploads/2022/06/ERIC_Bylaws_and_Membership_Agreement_June_2022_FINAL_FOR_PUBLICATION.pdf (last visited January 25, 2023).

³¹ Section 98.075(2)(c), F.S.

³² *Id.*

³³ Article I, s. 24(c), FLA. CONST., requires each public record exemption state with specificity the public necessity justifying the exemption.

accurate voter rolls. As a result, the effective and efficient administration of the statewide voter registration system would be hindered.³⁴

Pursuant to the OGSR Act, the exemption will repeal on October 2, 2023, unless reenacted by the Legislature.

During the 2022 interim, subcommittee staff sent a questionnaire to DOS as part of its review under the OGSR Act. DOS staff indicated they had not had any issues interpreting or applying the exemption and that they were unaware of the existence of any litigation concerning the exemption. DOS staff emphasized the importance of the exemption as it allows DOS to access information necessary for list maintenance that is exempt or confidential and exempt in the originating jurisdiction. As such, DOS staff recommended the exemption be reenacted as is.³⁵

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for voter registration information received by DOS pursuant to its membership in a nongovernmental entity from another member state or the District of Columbia which is confidential or exempt in that jurisdiction.

B. SECTION DIRECTORY:

Section 1 amends s. 98.075, F.S., relating to registration records maintenance activities; ineligibility determinations.

Section 2 provides an effective date of October 1, 2023.

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:

None.

³⁴ Chapter 2018-33, L.O.F.

³⁵ Open Government Sunset Review Questionnaire, Electronic Registration Information Center, response on file with the Ethics, Elections & Open Government Subcommittee.

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 spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.