

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 525 Pub. Rec./Personal Identifying Information/License to Carry a Concealed Weapon or Firearm

SPONSOR(S): Business & Professional Regulation Subcommittee; Grant and others

TIED BILLS: CS/HB 523 **IDEN./SIM. BILLS:** SB 546

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	10 Y, 2 N, As CS	Brown-Blake	Luczynski
2) Government Operations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

CS/HB 525 expands an existing public records exemption for certain personal identifying information submitted by applicants for licensure to carry a concealed weapon or firearm when the application is submitted to a tax collector rather than the Department of Agriculture and Consumer Services. The addition to the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

The bill contains a statement of public necessity as required by the Florida Constitution.

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

The bill shall take effect at the same time that CS/HB 523 is adopted and becomes law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act¹⁰ requires a newly created or expanded public records exemption to be repealed on October 2nd of the fifth year after enactment, unless reviewed and reenacted by the Legislature.¹¹ It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.¹²

Concealed Weapon or Firearm Licensure

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "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" 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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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).

⁷ FLA. CONST. art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

The Department of Agriculture and Consumer Services (Department) is responsible for issuing licenses to carry concealed weapons or concealed firearms to those who qualify.¹³ Carrying a concealed weapon without first obtaining a license could be a crime pursuant to s. 790.01, F.S. A concealed weapon or concealed firearm is defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie.¹⁴

In order to obtain a concealed weapon license, applicants must make application and meet the following general requirements:

- Is a citizen or permanent resident alien of the United States; or is a consular security official of a foreign government with diplomatic relations with the United States.
- Is at least 21 years old.
- Can physically handle a weapon safely.
- Is not a convicted felon.
- Has not been convicted of a crime under ch. 893, F.S., or been committed for the abuse of a controlled substance within a 3-year period immediately preceding the application date.
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired.
- Demonstrates competence with a firearm by completing a firearm training course or presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service; or is or has previously been licensed to carry a firearm in Florida.
- Has not been adjudicated an incapacitated person under s. 744.331, F.S.
- Has not been committed to a mental institution under ch. 394, F.S.
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other conditions set by the court have been fulfilled.
- Is not currently under a domestic violence injunction.
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.¹⁵

To obtain a concealed weapons license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant.
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days.
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions.
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents.
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.
- A full set of fingerprints.
- Documented proof of completion of a firearms safety and training course.
- A nonrefundable license fee no greater than \$70 for a new license or no greater than \$60 for a renewal.¹⁶

Concealed weapon license application submissions have steadily increased over the last 14 years. During fiscal year 1999-2000, the Department received 28,618 applications for initial licensure and 73,821 applications for licensure renewal.¹⁷ During fiscal year 2012-2013, the Department received

¹³ Section 790.06(1), F.S.

¹⁴ *Id.*

¹⁵ Section 790.06(2), F.S.

¹⁶ Section 790.06(4)-(5), F.S.

¹⁷ Florida Department of Agriculture and Consumer Services, Concealed Weapon or Firearm Licensed Reports, Applications and Dispositions by County, July 01, 1999-June 30, 2000, *available at*

204,288 new license applications and 60,293 applications for license renewal.¹⁸ During the same time period, the Department issued 192,026 new concealed weapon licenses and 59,856 renewals.¹⁹ As of the end of FY 2012-2013, there were 1,098,458 valid Florida concealed weapon licenses.²⁰

Current Exemptions Relating to Concealed Weapon Licensure Application Information

Section 790.0601, F.S., provides that personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S., held by the Division of Licensing of the Department (Division), is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption applies to any information held by the Division before, on, or after the effective date of the exemption.²¹ The exempt information shall be disclosed:

- With the express written consent of the applicant or licensee or his or her legally authorized representative;
- By court order upon a showing of good cause; or
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which shall include access to any automated database containing such information maintained by the Department.²²

In Chapter 2006-102, Laws of Florida, in which the exemption was created, the Legislature found that an identifiable public purpose existed for the creation of the exemption under review, and that it is no more broad than necessary to meet the public purpose it serves. In Section 2 of the 2006 chapter law, the statement of public purpose, invokes personal safety issues tied to the Department divulging the personal information of concealed weapons permit applicants and holders.

Specifically, the statement speaks of the contradiction between a person carrying a concealed firearm or weapon and making public that individual's personally identifying information. The inference that can be drawn from the statement of public purpose is that it is a matter of personal safety that an individual who carries a concealed firearm or weapon keep the weapon's presence out of the public view or scrutiny, and that public access to the individual's identity circumvents the "concealment" purpose of the concealed weapon permit.

The public records exemption created in s. 790.0601, F.S., was reenacted in 2011 pursuant to the Open Government Sunset Review Act.²³

Committee Substitute/House Bill 523 is linked to Committee Substitute/House Bill 525

Linked CS/HB 523 creates s. 790.0625, F.S., which authorizes the Department to appoint elected county tax collectors for the purpose of accepting and forwarding to the Department applications for concealed weapon or firearm licenses or renewals on behalf of the Division. These applications request personal identifying information that under current law is exempt from public records due to the aforementioned exemption once submitted to the Department.

http://www.freshfromflorida.com/content/download/7497/118839/07011999_06302000_cw_annual.pdf (last viewed February 10, 2014).

¹⁸ Florida Department of Agriculture and Consumer Services, Concealed Weapon or Firearm Licensed Reports, Applications and Dispositions by County, July 01, 2012-June 30, 2013, *available at* http://www.freshfromflorida.com/content/download/7484/118761/07012012_06302013_cw_annual.pdf (last viewed February 10, 2014).

¹⁹ Id.

²⁰ Florida Department of Agriculture and Consumer Services, Number of Valid Florida Concealed Weapon Licenses as Reported at the End of Each Fiscal year (June 30) Since Program Inception in October 1987, *available at* http://www.freshfromflorida.com/content/download/7504/118881/NumberOfValidCWLicenses_FiscalYearEndSince1987-1988.pdf (last viewed February 10, 2014).

²¹ Section 790.0601(1), F.S.

²² Section 790.0601(2), F.S.

²³ Ch. 2011-136, L.O.F.

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In order to be considered by the Department, tax collectors must submit a request to the Division to accept applications for concealed weapon or firearm licenses. The Division has the discretion to enter into a Memorandum of Understanding (MOU) with the tax collector. The Department and the Division has the authority to rescind the MOU for any reason at any time.

Regardless of the passage of CS/HB 523, appointed tax collectors may not maintain a list of persons who own firearms. Maintaining such a list makes the person in violation of the provisions of s. 790.335(2), F.S.

Any personal identifying information provided for the license or renewal that is contained in a tax collector's records as a result of the MOU arrangement with the Department does not currently have confidential and exempt status. However, if the same application is submitted to the Department at one of its eight regional offices, the personal identifying information is confidential and exempt.

Effect of the Bill

The bill expands the confidential and exempt status of the personal identifying information on an application for licensure to carry a concealed weapon or firearm submitted to tax collectors. In addition, the bill provides for an Open Government Sunset Review of the exemption and repeal on October 2, 2019, if the exemption is not reenacted.

The Legislature declares, through the bill, that personal identifying information of an individual who has applied for a license to carry a concealed weapon which is held by a tax collector needs to be made confidential and exempt from public records requirements. The bill includes a statement of public necessity, which finds that:

The knowledge that an individual has applied for a license to carry a concealed weapon or firearm may logically lead to the conclusion that he or she is carrying a concealed weapon or firearm. This defeats the purpose of carrying a concealed weapon or firearm. The Legislature has found in past legislative sessions and has expressed in s. 790.335(1)(a)3., Florida Statutes, that a record of legally owned firearms or law-abiding firearm owners is "an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution." Release of personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm could be used to harass an innocent individual based solely on his or her exercised right to carry a concealed weapon or firearm.

The exemption expanded by this bill applies to personal identifying information held by a tax collector appointed by the Department to receive that information from a person who is applying through the tax collector to the Department for a concealed weapon or firearm license or renewal. It applies to such information held by the tax collector before, on, or after the effective date of the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 790.0601, F.S., creating an exemption from public records requirements for certain personal identifying information held by the tax collector when an individual applies for a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S.

Section 2 provides the Legislative statement of public necessity for the public records exemption.

Section 3 provides the act shall take effect at the same time that CS/HB 523 is adopted and becomes law.

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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Business & Professional Regulation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment updates a reference to newly created s. 790.0625, F.S., in CS/HB 523. The staff analysis is drafted to reflect the committee substitute.