

## 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		Williamson	Williamson
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Current law provides a public record exemption for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division of Licensing (Division) of the Department of Agriculture and Consumer Services (Department). It authorizes release of such information in certain circumstances.

Committee Substitute for House Bill 523 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.

This bill, which is contingent upon the passage of Committee Substitute for House Bill 523, expands the current public record exemption for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division. It is expanded to include such information when it is held by a tax collector appointed by the Department to receive applications for concealed weapon or firearm licenses or renewals and fees.

The bill provides for retroactive application of the public record exemption. In addition, it authorizes release of the confidential and exempt information in certain circumstances.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the State Constitution.

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

**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 or expanded public record or public meeting exemption. The bill expands the current public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

###### Public Records

Article I, s. 24(a) of the State 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, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

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 Act<sup>2</sup> 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:

- 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 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.
- Protects trade or business secrets.

###### Concealed Weapon or Firearm Licensure

The Department of Agriculture and Consumer Services (Department) is responsible for issuing licenses to carry a concealed weapon or concealed firearm to those who qualify.<sup>3</sup> Carrying a concealed weapon without first obtaining a license could be a crime pursuant to s. 790.01, F.S. A concealed weapon or firearm is defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie.<sup>4</sup>

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.

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> Section 790.06(1), F.S.

<sup>4</sup> *Id.*

- 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.<sup>5</sup>

To obtain a concealed weapon 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.<sup>6</sup>

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.<sup>7</sup> During fiscal year 2012-2013, the Department received 204,288 new license applications and 60,293 applications for license renewal.<sup>8</sup> During the same time period, the Department issued 192,026 new concealed weapon licenses and 59,856 renewals.<sup>9</sup> As of the end of fiscal year 2012-2013, there were 1,098,458 valid Florida concealed weapon licenses.<sup>10</sup>

#### Public Record Exemption for 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 held by the Division of Licensing (Division) of the Department is confidential and exempt<sup>11</sup> from public record requirements. Current law provides for retroactive application<sup>12</sup> of the public record exemption.<sup>13</sup>

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<sup>5</sup> Section 790.06(2), F.S.

<sup>6</sup> Section 790.06(4)-(5), F.S.

<sup>7</sup> 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* [http://www.freshfromflorida.com/content/download/7497/118839/07011999\\_06302000\\_cw\\_annual.pdf](http://www.freshfromflorida.com/content/download/7497/118839/07011999_06302000_cw_annual.pdf) (last viewed February 10, 2014).

<sup>8</sup> 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](http://www.freshfromflorida.com/content/download/7484/118761/07012012_06302013_cw_annual.pdf) (last viewed February 10, 2014).

<sup>9</sup> Id.

<sup>10</sup> 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](http://www.freshfromflorida.com/content/download/7504/118881/NumberOfValidCWLicenses_FiscalYearEndSince1987-1988.pdf) (last viewed February 10, 2014).

<sup>11</sup> 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).

The confidential and exempt information must 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 includes access to any automated database containing such information maintained by the Department.<sup>14</sup>

#### Committee Substitute for House Bill 523 (2014)

Committee Substitute for House Bill 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.

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.

Any personal identifying information of an applicant for a license or renewal that is held by the tax collector, as a result of the MOU arrangement with the Department, is a public record. 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 from public record requirements.

#### **Effect of the Bill**

This bill, which is contingent upon the passage of Committee Substitute for House Bill 523, expands the current public record exemption for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division. The exemption is expanded to include such information when it is held by a tax collector appointed by the Department to receive applications and fees.

The confidential and exempt information must 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 includes access to any automated database containing such information maintained by the Department.

The bill provides for retroactive application of the public record exemption. In addition, it provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a public necessity statement as required by the State Constitution. It provides 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

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<sup>12</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *See Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

<sup>13</sup> Section 790.0601(1), F.S.

<sup>14</sup> Section 790.0601(2), F.S.

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.

**B. SECTION DIRECTORY:**

**Section 1** amends s. 790.0601, F.S., expanding the public record exemption for personal identifying information of an individual who applies for a license to carry a concealed weapon or firearm.

**Section 2** provides a public necessity statement.

**Section 3** provides a contingent effective date.

## **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:

See FISCAL COMMENTS section.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

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

## **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 an action requiring the expenditure 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, 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 or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the public record exemption for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division, to include such information when it is held by certain tax collectors. The exemption does not appear to be in conflict with the constitutional requirement that the 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**

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 as approved by the Business & Professional Regulation Subcommittee.