

## **FINAL BILL ANALYSIS**

**BILL #:** HB 7161

**FINAL HOUSE FLOOR ACTION:**

98 Y's      12 N's

**SPONSOR:** Rep. Patronis

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** SB 604

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### **SUMMARY ANALYSIS**

HB 7161 passed the House on April 28, 2011, and subsequently passed the Senate on April 29, 2011. The bill was approved by the Governor on June 2, 2011, chapter 2011-136, Laws of Florida, and takes effect October 1, 2011.

The bill reenacts the public record exemption for certain information of an applicant for or recipient of a license to carry a concealed weapon or firearm.

The Open Government Sunset Review Act requires the Legislature to review each public record 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.

Current law provides a public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm. Such 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.
- 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 of Agriculture and Consumer Services.

The bill reenacts the public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm, which will repeal on October 2, 2011, if this bill does not become law.

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

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> 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.

The 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:

- 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> 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<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Concealed Weapons and Concealed Firearms

Current law authorizes the Department of Agriculture and Consumer Services (department) to issue licenses to carry concealed weapons or concealed firearms<sup>4</sup> to qualified persons. The license is valid in Florida for seven years from the date of issuance. The license must include a color photograph of the licensee. The licensee must carry the license and valid identification at all times when in possession of the concealed weapon or firearm.<sup>5</sup>

An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit attesting to the applicant's completion of a firearms course, and a full frontal view color photograph<sup>6</sup> of the applicant.<sup>7</sup> The application must include:

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Section 790.06(1), F.S., defines "concealed weapons or concealed firearms" to mean a handgun, electronic weapon or device, tear gas gun, knife, or billie. It does not include a machine gun.

<sup>5</sup> Violation of s. 790.06(1), F.S., constitutes a noncriminal violation with a penalty of \$25. Section 790.06(1), F.S.

<sup>6</sup> The photograph must be taken within the preceding 30 days. The head, including hair, must measure 7/8 of an inch wide and 1 1/8 inches high. Section 790.06(5)(e), F.S.

- The name, address, place and date of birth, race, and occupation of the applicant.
- A statement that the applicant is in compliance with licensure requirements.
- A statement that the applicant has been furnished with a copy of chapter 790, F.S., relating to weapons and firearms.
- A warning that the application is executed under oath.
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.<sup>8</sup>

From 2010 to 2011, the department received 74,980 new applications and 53,516 renewal applications. Of those, the department issued 74,092 new licenses and 53,104 renewal licenses. To date, there are 793,809 valid licenses for concealed weapons or concealed firearms.<sup>9</sup>

#### Public Record Exemption under Review

In late 2005, an Orlando television station published on its website application information regarding holders of a concealed weapon license. The television station along with members of the Florida Legislature received numerous complaints concerning the Internet publication of such information.<sup>10</sup>

As a result, in 2006, the Legislature created a public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm.<sup>11</sup> Such information held by the Division of Licensing of the department before, on, or after July 1, 2006,<sup>12</sup> is confidential and exempt<sup>13</sup> from public records requirements. Such 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.
- 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>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.<sup>15</sup>

<sup>7</sup> Section 790.06(5), F.S.

<sup>8</sup> Section 790.06(4), F.S.

<sup>9</sup> *Concealed Weapon/Firearm Summary Report* at [http://licgweb.doacs.state.fl.us/stats/cw\\_monthly.html](http://licgweb.doacs.state.fl.us/stats/cw_monthly.html) (last viewed March 20, 2011).

<sup>10</sup> House of Representatives Staff Analysis, HB 687 CS (March 29, 2006), at 2.

<sup>11</sup> Chapter 2006-102, L.O.F.; codified as s. 790.0601, F.S.

<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. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

<sup>13</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).

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

<sup>15</sup> Section 790.0601(3), F.S.

## **Effect of Proposed Changes**

The bill removes the repeal date, thereby reenacting and saving from repeal the public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm.

## **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.