

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 Committee on Rules

BILL: SB 7044

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Concealed Carry License/Department of Agriculture and Consumer Services

DATE: April 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Cellon</u>	<u>Jones</u>		CJ Submitted as Committee Bill
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 7044 amends s. 790.0601, F.S., to save from repeal the current exemption from public records disclosure for the personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm, by removing the October 2, 2019, repeal date.

The exemption was created in conjunction with s. 790.0625, F.S., which authorizes the Division of Licensing (DOL) of the Department of Agriculture and Consumer Services (DACS) to enter into agreements with local tax collector's offices to accept and submit concealed weapon or firearm license applications or renewal applications to the DOL of the DACS for processing and decisions on whether the license should be issued.

The same information is exempted from the public records law if the applicant provides it directly to the DOL of the DACS at one of the DACS regional offices.

The bill requires a majority vote for passage.

The bill takes effect October 1, 2019.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ 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 provisions¹²

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ Section 119.011(12), F.S., defines “public record” 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” as “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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁴ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁹

Public Records Exemption Under Review

The personal identifying information of persons who apply for a concealed weapon or firearm license, or renew an existing license, through a local tax collector’s office was made confidential and exempt from public disclosure in 2014.²⁰ The exemption is scheduled to repeal on October 2, 2019, unless it is reviewed and saved from repeal by the Legislature in accordance with s. 119.15, F.S.²¹

The exemption was created in conjunction with a bill authorizing the Division of Licensing (DOL) of the Department of Agriculture and Consumer Services (DACS), which administers the concealed weapon and firearm licensure program, to enter into agreements with local tax collectors to accept applications on behalf of the DOL of the DACS.²²

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 790.0601(2), F.S.

²¹ Section 790.0601(4), F.S.

²² Section 790.0625, F.S., Appointment of tax collectors to accept applications for a concealed weapon or firearm license; fees; penalties; Section 790.06, F.S., License to carry concealed weapon or firearm; [As of June 30, 2018 there were 1,927,724 concealed weapon or firearm licensees in Florida. DACS, DOL, *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 https://www.freshfromflorida.com/content/download/7504/118881/NumberOfValidCWLicenses_FiscalYearEndSince1987-1988.pdf (last visited January 17, 2019)].

The exemption was created as an extension of the public records exemption for the same personal identifying information of an applicant or a person who has received a concealed weapon or firearm license, by applying for the license directly through the DOL of the DACS. The exemption for the information held by the DOL of the DACS was created in s. 790.0601(1), F.S., in 2006 and reenacted in 2011.²³

On behalf of the DOL of the DACS, tax collectors obtain the following personal identifying information from a person who is applying for a new concealed weapons or firearms license through the tax collector's office, pursuant to s. 790.06, F.S., including, in part:

- The name, address, place of birth, date of birth, and race of the applicant;
- A full set of fingerprints of the applicant; and
- A full frontal view color photograph of the applicant taken within the preceding 30 days, in which the head, including hair, measures 7/8 of an inch wide and 1 1/8 inches high.²⁴

The application and accompanying information required by s. 790.06, F.S., is submitted to the DOL of the DACS via the Concealed Weapon Intake System (CWIS) by the tax collector's office.²⁵ The tax collector only performs the ministerial function of submitting applications and information to the DOL of the DACS for processing, as a convenience for the applicant.

Currently, 55 of Florida's 67 county tax collectors are providing the concealed weapon and firearm license application submission process authorized in s. 790.0625, F.S.²⁶ Twenty eight of the 35 tax collectors responding to legislative staff's questionnaire reported a total of 194,078 applications for new licenses and renewals have been processed and submitted to the DOL of the DACS from July 2014 to December 2019.²⁷

The tax collectors have entered into a memoranda of understanding with the DOL of the DACS, memorializing the duties and responsibilities of the two parties.²⁸ For instance, the DOL of the DACS provides tax collector employee training, a computer configuration, and network equipment such as CWIS which is necessary for the tax collector's office to submit completed applications to the DOL of the DACS. The tax collectors provide a secure location for the

²³ Chapters 2006-102 and 2011-136, L.O.F.

²⁴ Sections 790.06(4) and (5), F.S.

²⁵ The process is explained in the tax collectors' answers to questions sent to them by legislative staff. The completed questionnaires are on file with the Senate Committee on Criminal Justice. An application can be downloaded and additional eligibility requirements and application instructions are available at DACS, *Applying for a Concealed Weapon License*, available at <https://www.freshfromflorida.com/Consumer-Resources/Concealed-Weapon-License/Applying-for-a-Concealed-Weapon-License> (last visited January 17, 2019).

²⁶ In addition to the participating local tax collectors, the DACS has nine regional offices throughout the state that perform the same function as the tax collectors. DACS, *Concealed Weapon License Service Locations*, available at <https://www.freshfromflorida.com/Consumer-Resources/Concealed-Weapon-License/Concealed-Weapon-License-Service-Locations> (last visited January 17, 2019).

²⁷ The completed questionnaires are on file with the Senate Committee on Criminal Justice. It should be noted that not all 28 of the tax collectors responding to the questionnaire began participation in the program at the same time.

²⁸ Section 790.0625(3), F.S.

computer configuration and the CWIS, remit application and fingerprint processing fees to the DOL of the DACS, and agree to abide by the confidentiality requirements in s. 790.0601, F.S.²⁹

Pursuant to s. 790.0625, F.S., the tax collector may collect and retain a convenience fee of \$22 for new license applications and \$12 for each license renewal.³⁰ Tax collectors are authorized in s. 790.0625, F.S., to print and deliver license renewals if the renewal applicant provides a completed application and new color photograph, and pays the appropriate fees, and if the DOL of the DACS approves issuance of the license.³¹

Section 790.0601, F.S., provides that the confidential and exempt personal identifying information held by a tax collector shall be disclosed under the following circumstances:

- 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 DACS.³²

III. Effect of Proposed Changes:

The bill amends s. 790.0601(2), F.S., to continue the public record exemption for the personal identifying information of applicants for a new or renewal license to carry a concealed weapon or firearm, held by a tax collector for submission to the DOL of the DACS.³³

Specifically, the bill continues the exemption by deleting the October 2, 2019, repeal date.

The bill requires a majority vote for passage.

The bill takes effect October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

²⁹ Copies of memoranda of understanding, provided by tax collector's offices pursuant to request by legislative staff, are on file with the Senate Committee on Criminal Justice.

³⁰ Section 790.0625(5), F.S.

³¹ Section 790.0625(8), F.S.

³² Section 790.0601(3), F.S.

³³ Section 790.0601(2), F.S.

B. Public Records/Open Meetings Issues:***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 bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal; thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public meetings exemption without expansion.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill preserves the public records exemption for the personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm. The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

By preserving the public records exemption for the personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm, an agency in possession of these records will continue to incur costs related to the redaction of records in response to a public records request.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.0601 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.