

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7059 PCB OTM 19-15 OGSR/Concealed Carry License/DACS
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Yarborough
TIED BILLS: **IDEN./SIM. BILLS:** SB 7044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Moore	Harrington
1) Criminal Justice Subcommittee	14 Y, 0 N	Padgett	Hall
2) State Affairs Committee	21 Y, 0 N	Moore	Williamson

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 Agriculture and Consumer Services (department) is responsible for issuing licenses to carry a concealed weapon or firearm to those who qualify. Unless an exception applies, a person may not carry a concealed weapon or firearm in public without a license. In 2014, the Legislature created a process to allow the department to appoint elected county tax collectors to accept applications for concealed weapon or firearm licenses or license renewals on behalf of the department. As part of this new process, the Legislature created a public record exemption for personal identifying information of an applicant for such license or renewal that is held by a tax collector appointed by the department to receive such applications.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2019, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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 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 (essentially creating a new exemption), 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Concealed Weapon or Firearm Licensure

The Department of Agriculture and Consumer Services (department) is responsible for issuing licenses to carry a concealed weapon or firearm to those who qualify.⁶ Unless an exception applies, a person may not carry a concealed weapon or firearm in public without a license.⁷ A concealed weapon or firearm is defined as a handgun, an electronic weapon or device, a tear gas gun, a knife, or a billie.⁸

Section 790.0601(1), 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 department's Division of Licensing (division) is confidential and exempt⁹ from public record requirements.

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Art. I, s. 24(c), Fla. Const.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 790.06(1), F.S.

⁷ Section 790.01, F.S.

⁸ Section 790.06(1), F.S.

⁹ 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 statute. See 85-62 Fla. Op. Att'y Gen. (1985).

In 2014, the Legislature created a process to allow the department to appoint elected county tax collectors to accept applications for concealed weapon or firearm licenses or renewals of such licenses on behalf of the department.¹⁰ The tax collector only performs the ministerial function of submitting applications and information to the division for processing, as a convenience for the applicant. In order to be considered for appointment by the department, a tax collector must submit a written request to the division.¹¹ The division has the discretion to enter into a memorandum of understanding (MOU) with the tax collector, and both the division and the department have the authority to rescind the MOU for any reason at any time.¹² Currently, 53 of Florida's 67 county tax collectors have MOUs with the department.¹³

During fiscal year 2017-2018, the department received 213,486 applications for initial licensure and 139,214 applications for licensure renewal.¹⁴ As of January 31, 2019, there were 1,959,220 valid Florida concealed weapon or firearm licenses.¹⁵

Public Record Exemption under Review

As part of the new process to allow tax collectors to accept applications for concealed weapon or firearm licenses or license renewals on behalf of the department, in 2014 the Legislature created a public record exemption for personal identifying information of an applicant that is held by a tax collector appointed by the department to receive the applications.¹⁶ Such information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.¹⁷

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.¹⁸

The 2014 public necessity statement for the exemption provided that:¹⁹

The potential addition of licensure locations raises issues of confidentiality. 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

¹⁰ Chapter 2014-205, L.O.F.; codified as s. 790.0625, F.S.

¹¹ Section 790.0625(3), F.S.

¹² *Id.*

¹³ Florida Department of Agriculture and Consumer Services, *Concealed Weapon License Service Locations*, <https://www.freshfromflorida.com/Consumer-Resources/Concealed-Weapon-License/Concealed-Weapon-License-Service-Locations> (last visited Mar. 25, 2019).

¹⁴ Florida Department of Agriculture and Consumer Services, *Concealed Weapon or Firearm License Reports, Applications and Dispositions by County, July 1, 2017 - June 30, 2018*, https://www.freshfromflorida.com/content/download/76929/2217458/07012017_06302018_cw_annual.pdf (last visited Mar. 25, 2019).

¹⁵ Florida Department of Agriculture and Consumer Services, *Concealed Weapon or Firearm License Summary Report, October 1, 1987 - January 31, 2019*, https://www.freshfromflorida.com/content/download/7499/118851/cw_monthly.pdf (last visited Mar. 25, 2019).

¹⁶ Chapter 2014-206, L.O.F.

¹⁷ Section 790.0601(2), F.S.

¹⁸ Section 790.0601(3), F.S.

¹⁹ Section 2, ch. 2014-206, L.O.F.

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.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2019, unless reenacted by the Legislature.²⁰

During the 2018 interim, subcommittee staff sent a questionnaire to each county tax collector as part of its review under the Open Government Sunset Review Act. Responses were received from 35 tax collectors, 26 of which have been appointed by the department to accept applications for concealed weapon or firearm licenses and license renewals. Overall, these tax collectors expressed that the exemption is necessary to protect the privacy and personal safety of applicants and recommended reenacting the exemption in its current form.

Effect of the Bill

The bill removes the scheduled repeal of the public record exemption, thereby maintaining the public record exemption for personal identifying information of an applicant for a concealed weapon or firearm license or renewal of such license that is held by a tax collector appointed by the department to receive applications.

B. SECTION DIRECTORY:

Section 1. amends s. 790.0601, F.S., relating to public records exemption for concealed weapons.

Section 2. provides an effective date of October 1, 2019.

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.

²⁰ Section 760.0601(4), F.S.
STORAGE NAME: h7059d.SAC
DATE: 4/8/2019

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.