

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 Criminal Justice Committee

BILL: SB 1646

INTRODUCER: Senator Latvala

SUBJECT: Concealed Weapons or Firearms Licenses

DATE: April 6, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.			CM	
3.			CA	
4.				
5.				
6.				

I. Summary:

Senate Bill 1646 exempts certain local officeholders who have valid concealed weapons or firearms licenses from the current restrictions on where concealed weapons or firearms can be carried by licensees. Restrictions would be lifted for places including jails, prisons, courthouses and courtrooms, schools, and airport terminals.

County commissioners, school board members, and county constitutional officers are specified as the officeholders who are exempt under the bill. The exemption applies for as long as the officeholder holds office.

This bill substantially amends section 790.06 of the Florida Statutes.

II. Present Situation:

Concealed Weapons Licensure

The Department of Agriculture and Consumer Services (DACCS) is authorized to issue concealed weapon licenses to those applicants that qualify.¹ Concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie but not a machine gun for purposes of the licensure law.²

¹ s. 790.06(1), F.S.

² *Id.*

According to the FY 2009-2010 statistics, the DACS received 167,240 new licensure applications and 91,963 requests for licensure renewal during that time period.³

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; and
- A nonrefundable license fee.⁴

Additionally, the applicant must attest that he or she is in compliance with the criteria contained in subsections (2) and (3) of s. 790.06, F.S.

Subsection (2) of s. 790.06, F.S., requires the DACS to issue the license to carry a concealed weapon, if all other requirements are met, and the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his

³ http://licgweb.doacs.state.fl.us/stats/07012009_06302010_cw_annual.pdf; last visited February 11, 2011.

⁴ s. 790.06(1)-(5), F.S.

or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;

- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.⁵

The DACS must deny the application if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.⁶

The DACS shall revoke a license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.⁷

The DACS shall, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under this section, until final disposition of the case.⁸ The DACS shall suspend a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.⁹

In addition, the DACS is required to suspend or revoke a concealed weapons license if the licensee:

⁵ s. 790.06(2), F.S.

⁶ s. 790.06(3), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

- Is found to be ineligible under the criteria set forth in subsection (2);
- Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;
- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.¹⁰

Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.¹¹ Failure to have proper documentation and display it upon demand is a second degree misdemeanor.¹²

- ***A Concealed Carry License does not authorize concealed carry in certain locations.*** A concealed weapon or firearms license does not authorize a person to carry a weapon or firearm in a concealed manner into: any place of nuisance as defined in s. 823.05, F.S.;
- any police, sheriff, or highway patrol station;
- any detention facility, prison, or jail;
- any courthouse;
- any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
- any polling place;
- any meeting of the governing body of a county, public school district, municipality, or special district;
- any meeting of the Legislature or a committee thereof;
- any school, college, or professional athletic event not related to firearms;
- any school administration building;
- any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- any elementary or secondary school facility;
- any career center;

¹⁰ s. 790.06(10), F.S.

¹¹ s. 790.790.06(1), F.S.

¹² s. 790.06(1), F.S.

- any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
- inside the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
- any place where the carrying of firearms is prohibited by federal law.

Any person who willfully violates any of the above-listed provisions commits a misdemeanor of the second degree.¹³

Certain persons under particular circumstances are exempt from the limitations of the concealed firearm carry licensure requirements in s. 790.06, F.S., when the weapons and firearms are lawfully owned, possessed and used. These persons and circumstances are:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;
- Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chs. 250 and 251, F.S., and under federal laws, when on duty or when training or preparing themselves for military duty;
- Persons carrying out or training for emergency management duties under ch. 252, F.S.;
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of ch. 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;
- Officers or employees of the state or United States duly authorized to carry a concealed weapon;
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state;
- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;

¹³ s. 790.06(12), F.S.

- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;
- A person firing weapons in a safe and secure indoor range for testing and target practice;
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- A person possessing arms at his or her home or place of business; and
- Investigators employed by the public defenders and capital collateral regional counsel of the state, while actually carrying out official duties.¹⁴

Local officeholders

County constitutional officers are set forth in Article VIII, Section 1(d) of the Florida Constitution as:

COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a *sheriff*, a *tax collector*, a *property appraiser*, a *supervisor of elections*, and a *clerk of the circuit court*; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds. (emphasis added)

County commissioners are defined as:

Commissioners. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years.¹⁵

School Boards and members, as defined in the Florida Constitution are:

Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.¹⁶

¹⁴ s. 790.25(3), F.S.

¹⁵ Art. VIII, Sect. 1(e), Florida Constitution.

¹⁶ Art. 9, Sect. 4, Florida Constitution.

The Florida Constitution defines the Superintendent of Schools as:

Superintendent of schools.—In each school district there shall be a superintendent of schools who shall be elected at the general election in each year the number of which is a multiple of four for a term of four years; or, when provided by resolution of the district school board, or by special law, approved by vote of the electors, the district school superintendent in any school district shall be employed by the district school board as provided by general law.¹⁷

Recent events have occurred both in Florida and in Arizona in which public officials have been attacked by gunmen.

In December 2010, the Bay County, Florida, School Board meeting turned into a hostage-taking situation when a lone gunman approached the podium while pulling and waving a handgun at the school board members. He allowed the audience and other women to leave the meeting room but the remaining school board members remained in their seats as he pointed the gun at them, at point-blank range. After some minutes and discussion between the man and the board members passed, the man shot the firearm, miraculously missing the school board members as they dove for cover behind the dais. The school district's security officer arrived about the time the man had apparently shot himself. There was no metal detector nor other security measure in place at the entrance to the meeting room at the time of the incident.¹⁸

In January 2011, an Arizona congresswoman and bystanders at a public event in a supermarket parking lot were gunned down by a lone gunman. The congresswoman was shot in the face at close range but survived. At least 18 people were shot and 6 of them died, including a federal judge and a nine year old girl. The congresswoman had just been sworn in for her third term in Congress after a particularly tough race.¹⁹

III. Effect of Proposed Changes:

The bill exempts certain local officeholders who have valid concealed weapons or firearms licenses from the current restrictions on where concealed weapons or firearms can be carried by licensees. The exemption applies for as long as the officeholder holds office. County commissioners, school board members and county constitutional officers are specified as the officeholders who are exempt under the bill.

Other Potential Implications:

It should be noted that the locations where concealed carry licensees are not permitted to carry their weapons or firearms include local jails and state prison facilities. These are places where trained law enforcement and correctional officers do not carry firearms inside the compound, among the detainees and inmates.

¹⁷ Art. 9, Sect. 5, Florida Constitution.

¹⁸ Panama City News Herald story, December 16, 2010.

¹⁹ Congresswoman shot in Tucson rampage, The Washington Post, January 9, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.