

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 546

INTRODUCER: Senator Simpson

SUBJECT: Public Records/Personal Identifying Information/License to Carry a Concealed Weapon or Firearm

DATE: March 11, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 546 amends s. 790.0601, F.S., to expand the current confidential and exempt status of personal identifying information collected from a person applying for a license to carry a concealed weapon or firearm, or the renewal of a license, and held by the Department of Agriculture and Consumer Services (DACS).

Companion bill SB 544 authorizes DACS to enter into a Memorandum of Understanding with county tax collectors to accept concealed weapon or firearm license or renewal applications and fees at the local level.

SB 546 expands an existing public records exemption so that personal identifying information held by county tax collectors on behalf of DACS will maintain their confidential and exempt status. SB 546 provides for an Open Government Sunset Review of this exemption and repeal on October 2, 2019, if the exemption is not reenacted.

Section 2 of this bill includes a statement of public necessity consistent with the findings related to the current exemption being expanded by this bill. The inference that can be drawn from the statement of public purpose is that it is a matter of personal safety that an individual who carries a concealed firearm or weapon keep the weapon's presence out of the public view or scrutiny, and that public access to the individual's identity circumvents the "concealment" purpose of the concealed weapon permit.

Because this bill expands a public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

## II. Present Situation:

### Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> 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 provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act<sup>10</sup> requires a newly created or expanded public records exemption to be repealed on October 2nd of the fifth year after enactment, unless reviewed and reenacted by the Legislature.<sup>11</sup> It further provides that a public records exemption may be created

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> Section 119.011(12), F.S., defines "public records" 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" to mean "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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S.

<sup>11</sup> Section 119.15(3), F.S.

or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.<sup>12</sup>

### **Concealed Weapon or Firearm Licensure**

The Department of Agriculture and Consumer Services (DACS) is responsible for issuing concealed weapon licenses to those applicants who qualify.<sup>13</sup> DACS has received 96,840 new license applications and 2,153 applications for license renewal since July 1, 2013.<sup>14</sup> During the same time period, DACS issued 99,606 new concealed weapon licenses and 2,239 renewals.<sup>15</sup> As of December 31, 2013, there were 1,215,708 valid Florida concealed weapon licenses.<sup>16</sup>

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 no greater than \$70 for a new license or no greater than \$60 for a renewal.<sup>17</sup>

### **Existing Exemption for Concealed Weapon Applicants' Personal Identifying Information**

Current law provides that personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.061, F.S., held by the Division of Licensing of the Department of Agriculture and Consumer Services, is confidential and exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption applies to such information held by the division before, on, or after the effective date of the exemption.<sup>18</sup> Such information shall 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

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<sup>12</sup> Section 119.15(5)(b), F.S.

<sup>13</sup> s. 790.06(1), F.S.

<sup>14</sup> Applications and Dispositions by County, July 1, 2013-June 30, 2014. Statistic found at [www.freshfromflorida.com](http://www.freshfromflorida.com), last visited January 15, 2014.

<sup>15</sup> Summary Report, October 1987-June 2014. [www.freshfromflorida.com](http://www.freshfromflorida.com), last visited January 15, 2014.

<sup>16</sup> Number of Valid Florida Concealed Licenses as of December 31, 2013. [www.freshfromflorida.com](http://www.freshfromflorida.com), last visited January 15, 2014.

<sup>17</sup> s. 790.06(1)-(5), F.S.

<sup>18</sup> s. 790.0601(1), F.S.

- 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.<sup>19</sup>

In Chapter 2006-102, Laws of Florida, in which the exemption was created, the Legislature found that an identifiable public purpose existed for the creation of the exemption under review, and that it is no more broad than necessary to meet the public purpose it serves. Section 2 of the 2006 chapter law, the statement of public purpose, invokes personal safety issues tied to the Department of Agriculture and Consumer Services divulging the personal information of concealed weapons permit applicants and holders.

Specifically, the statement speaks of the contradiction between a person carrying a concealed firearm or weapon and making public that individual's personally identifying information. The inference that can be drawn from the statement of public purpose is that it is a matter of personal safety that an individual who carries a concealed firearm or weapon keep the weapon's presence out of the public view or scrutiny, and that public access to the individual's identity circumvents the "concealment" purpose of the concealed weapon permit.

The public records exemption created in s. 790.0601, F.S., was reenacted in 2011 pursuant to the Open Government Sunset Review Act.<sup>20</sup>

### **Senate Bill 544 is linked to Senate Bill 546**

Linked SB 544 creates a new section of law within Chapter 790, F.S., to allow DACS to appoint county tax collectors for the purpose of accepting applications for concealed weapon or firearm licenses or renewals on behalf of the Division of Licensing (the Division).

County tax collectors who are interested in the appointment by DACS will submit a request to the Division. The Division then has the discretion to enter into a Memorandum of Understanding (MOU) with the tax collector. Both the DACS and the Division have the authority to rescind the MOU.

Regardless of the passage of SB 544, appointed tax collectors may not maintain a list of persons who own firearms. Maintaining such a list makes the person subject to the provisions of s. 790.335, F.S.<sup>21</sup>

Any personal identifying information provided for the license or renewal that is contained in a tax collector's records as a result of the MOU arrangement with DACS does not currently have confidential and exempt status.

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<sup>19</sup> s. 790.0601(2), F.S.

<sup>20</sup> Ch. 2011-136, L.O.F.

<sup>21</sup> Section 790.335, F.S. states: "PROHIBITIONS.—No state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms." Such conduct is subject to third degree felony penalties and a \$5 million dollar fine.

### **III. Effect of Proposed Changes:**

Linked SB 544 authorizes DACS to enter into a Memorandum of Understanding with county tax collectors to provide the service of accepting concealed weapon or firearm license or license renewal applications and fees at the local level.

SB 546 amends s. 790.0601, F.S., to expand the current confidential and exempt status of the personal identifying information collected from a person applying for a license to carry a concealed weapon or firearm, or the renewal of a license, and held by DACS to the county tax collectors who will be collecting and holding the same information pursuant to the authorization in SB 544.

SB 546 provides for an Open Government Sunset Review of the exemption and repeal on October 2, 2019, if the exemption is not reenacted.

Section 2 of the bill includes a statement of public necessity which makes many of the same Legislative findings as those set forth in Chapter 2006-102, L.O.F., the law that created the exemption that is being expanded by this bill. The statement of public necessity in SB 546 finds 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 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.

The exemption expanded by this bill applies to personal identifying information held by a county tax collector appointed by DACS to receive that information from a person who is applying through the county tax collector to DACS for a concealed weapon or firearm license or renewal. It applies to such information held by the tax collector before, on, or after the effective date of the bill.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:****Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. Because this bill expands a public records exemption, a two-thirds vote is required.

**Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. Because this bill expands a public records exemption, it contains a public necessity statement.

**Single Subject Requirement**

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain no other substantive provisions. Because this bill expands a public records exemption, it does not contain other substantive provisions.

**Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill expands a public records exemption by including a concealed weapon or firearm license applicant's personal identifying information to that information which is held by a county tax collector who is acting under linked SB 544.

Currently this same personal identifying information has confidential and exempt status if the applicant files their application directly with DACS. This bill expands the confidential and exempt status not to a greater amount or different type of information, but rather to the same information held by a different agency (county tax collectors) pursuant to an agreement with DACS.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

As set forth in the linked bill, SB 544, a convenience fee of \$22 may be charged by the county tax collector to perform the services agreed upon with DACS. This fee will only be incurred if a person chooses to avail him or herself of the tax collector's service.

C. **Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

Section 3 of the bill fails to state that SB 546 should be enacted on the same date as SB 544 or similar legislation.

SB 546 currently provides that information held by tax collectors will be confidential and exempt from public disclosure and that information may be released by the written consent, by court order and to law enforcement upon request. This bill does not include a provision which explicitly states that tax collectors can release confidential and exempt information to DACS.<sup>22</sup> It is unclear if taken as a whole, SB 546's expansion of DACS's current public records exemption to include tax collectors as appointees is sufficient to allow tax collectors to release confidential and exempt information to DACS without a separate statutory provision.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill 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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>22</sup> See footnote 6.