

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1153 Public Records/Recreational Activities Licenses/FWCC

**SPONSOR(S):** Agriculture and Natural Resources Subcommittee and Goodson

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Gregory	Harrington
2) Government Operations Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Current law does not provide a public records exemption for information held by the Florida Fish and Wildlife Conservation Commission (FWC) in connection with recreational fishing, hunting, or use licenses and permits, hunter safety certifications, or boating safety certifications or recreation records. Thus, such information is subject to public records request and disclosure.

The bill creates a public record exemption for personal information held by FWC in connection with recreational fishing, hunting, or use licenses and permits; hunter safety certifications; and boating safety certifications or recreation records. The bill authorizes FWC to disclose personal information:

- To an agency carrying out its duties;
- For use in connection with any civil, criminal, administrative, or arbitral proceeding;
- When the requestor demonstrates it has obtained the written consent of the individual to whom the information pertains; and
- For use by a commercial entity for verification of the accuracy of personal information received by a commercial entity in the normal course of its business, including identification or prevention of fraud or matching, verifying, or retrieving information.

The bill provides that the exemption applies to personal information held by an agency before, on, or after July 1, 2016. The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

The bill may have an insignificant fiscal impact on FWC.

**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 newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption. Thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Public Records Law

Article I, section 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency<sup>1</sup> to provide access to public records.<sup>2</sup> Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

##### Public Records Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>3</sup>

The Open Government Sunset Review Act<sup>4</sup> provides that a public record 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.<sup>5</sup>

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup>

##### Confidential versus Confidential and Exempt

When creating a public record exemption, the Legislature designates the record as "exempt" or "confidential and exempt." There is a difference between records the Legislature has designated as exempt and those designated as confidential and exempt. A record that is designated as confidential

---

<sup>1</sup> Section 119.011(2), F.S., defines the term "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 chapter 119, F.S., 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.

<sup>2</sup> Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of 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.

<sup>3</sup> FLA. CONST. art. I, s. 24(c).

<sup>4</sup> Section 119.15, F.S.

<sup>5</sup> Section 119.15(6)(b), F.S.

<sup>6</sup> Section 119.15(3), F.S.

and exempt may only be released by the records custodian to those persons or entities designated in statute.<sup>7</sup> However, records designated as exempt may be disclosed under certain circumstances.<sup>8</sup>

### FWC Recreational Licenses, Permits, and Certifications

Any person who wishes to recreationally take wild animal life, freshwater aquatic life, or marine life must obtain a license, permit, or other authorization from the Florida Fish and Wildlife Conservation Commission (FWC) unless exempt by statute.<sup>9</sup> Each applicant for a recreational license must provide their social security number on the application form.<sup>10</sup> However, social security numbers held by agencies are confidential and exempt from disclosure and may only be released in specified situations.<sup>11</sup>

According to FWC, personal information collected for a recreational hunting or fishing license is populated by the personal information held by the Department of Highway Safety and Motor Vehicles (HSMV) by using the applicant's driver license number or identification card number or by swiping the identification card. The personal information contained in the HSMV motor vehicle record is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, and only may be released as provided by the act.<sup>12</sup> Such information is not protected once obtained by FWC.<sup>13</sup>

Any person born on or after June 1, 1975, may not be issued a license to hunt in Florida with the use of a firearm, gun (including a muzzle-loading gun), bow, or crossbow without first having successfully completed a hunter safety course.<sup>14</sup> This course includes 16 hours of instruction including, but not limited to, instruction in the competent and safe handling of firearms, conservation, and hunting ethics.<sup>15</sup> FWC may accept hunter safety certification cards issued by another wildlife agency of another state, or any Canadian province.<sup>16</sup> In addition, any person born on or after January 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel photographic identification and a boater safety identification card issued by FWC.<sup>17</sup> To obtain a boater safety identification card, each individual must take an 8 hour instructional course, pass a course equivalency examination, or pass a temporary certificate examination.<sup>18</sup> An applicant must disclose certain personal information to obtain either a hunter safety certification or a boater safety certification.

Currently, there is no public record exemption for personal information held by FWC in connection with recreational licenses, permits, other noncommercial or nonprofessional licenses, permits, and certifications.

### **Effect of the Proposed Changes**

The bill creates a public record exemption for personal information held by FWC in connection with recreational fishing, hunting, or use licenses and permits, or other noncommercial or nonprofessional licenses and permits; hunter safety certifications; and boating safety certifications or recreation records.

---

<sup>7</sup> WFTV, Inc. v. School Board of Seminole County, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

<sup>8</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

<sup>9</sup> *See* ss. 379.352(3), 379.353 and 379.401, F.S.; FWC, *Exemptions – Do I need a license or permit*, <http://myfwc.com/license/recreational/do-i-need-a-license/> (last visited January 18, 2016).

<sup>10</sup> Section 379.352(3), F.S.

<sup>11</sup> Section 119.071(5)(a), F.S., provides specific instances when a social security number may be released. In addition, FWC must release such numbers for purposes of administration of the Title IV-D program for child support enforcement and use by the FWC. Section 379.352, F.S.

<sup>12</sup> Section 119.0712(2)(b), F.S.

<sup>13</sup> *See* 2010-10 Fla. Op. Att'y Gen. (2010).

<sup>14</sup> Section 379.3581(2)(a), F.S.; FWC, *Hunter Safety License Requirement*, <http://myfwc.com/license/recreational/hunter-safety-requirement/> (last visited January 18, 2016).

<sup>15</sup> Section 379.3581(3), F.S.

<sup>16</sup> Section 379.3581(5), F.S.

<sup>17</sup> Section 327.395(1), F.S.

<sup>18</sup> *Id.*

The bill defines "commercial entity" as any corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association.

The bill also defines "personal information" as information that identifies an individual, including, but not limited to, an individual's photograph; social security number; driver license number; name; date of birth; address, exclusive of the five-digit zip code; telephone number; e-mail or other electronic communication address; and medical or disability information. Such information is deemed confidential and exempt, meaning FWC only may disclose such information to those persons or entities designated in statute.

The bill authorizes FWC to disclose the personal information it holds:

- For use by a court, law enforcement agency, or other agency, in carrying out its duties;
- For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or agency presenting before a self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court;
- For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains; and
- For use by a commercial entity for verification of the accuracy of personal information received by a commercial entity in the normal course of its business, including identification or prevention of fraud or matching, verifying, or retrieving information. This authorization does not include the display or bulk sale of a legal residential address, date of birth, and telephone number of a license holder to the public or the distribution of such numbers to any customer that is not identifiable by the commercial entity.

The bill provides that the exemption applies to personal information held by the commission before, on, or after July 1, 2016.<sup>19</sup>

The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution. Specifically, the bill provides that such personal information provided on applications can be obtained and used to perpetrate identity theft and other invasive contacts. However, the bill creates a public record exemption for information held by FWC, which may include more information than provided on the application.

## B. SECTION DIRECTORY:

- Section 1. Creates s. 379.107, F.S., creating a public record exemption for certain personal information held by FWC in connection with recreational fishing, hunting, or use licenses and permits, or other noncommercial or nonprofessional licenses and permits; hunter safety certifications; and boating safety certifications or recreation records.
- Section 2. Provides a public necessity statement.
- Section 3. Provides an effective date of July 1, 2016.

---

<sup>19</sup> In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation, 729 So.2d 373 (Fla. 2001).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a minimal fiscal impact on FWC because staff responsible for complying with public record requests could require training related to the new public record exemption. In addition, FWC may incur costs associated with redacting the exempt financial information prior to releasing a record. However, these costs can be absorbed as they are part of the day-to-day responsibilities of FWC.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

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 newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption. Thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption. Thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for personal information held by FWC in connection with recreational fishing, hunting, or use licenses and permits, or other noncommercial or nonprofessional licenses and permits; hunter safety certifications; and boating safety certifications or recreation records for the purpose of protecting against identity theft and other invasive contacts. As drafted,

the bill may protect more information than necessary to serve the necessity of the exemption by protecting information that may not necessarily be identifying in nature, such as medical information and date of birth. As such, the exemption appears to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 26, 2016, the Agriculture and Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Defined “commercial entity” as a corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association;
- Provided that the personal information may be disclosed to a commercial entity to verify the accuracy of personal information received by a commercial entity in the normal course of its business;
- Provides that the exemption applies to personal information held by the commission, not an agency; and
- Expanded the public necessity statement to ensure that it properly reflects the purpose of the public records exemption in the bill.