

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 Governmental Oversight and Accountability

BILL: CS/SB 1364

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Hays

SUBJECT: Public Records/Personal Information Obtained in Connection with Licensure

DATE: February 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1364 provides a public records exemption for personal information held by the Fish and Wildlife Conservation Commissions (FWC) in connection with licenses, permits, and certifications issued by FWC related to:

- Recreational fishing, hunting, or use licenses and permits, or other noncommercial or nonprofessional licenses and permits;
- Hunter safety certifications; and
- Boating safety certification or recreation records.

The bill defines “commercial entity” to mean any corporation, partnership, limited partnership, proprietorship, sold proprietorship, firm, enterprise, franchise, or association.

The bill defines “personal information” to mean 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.

The bill provides circumstances for when personal information may be disclosed by the FWC.

The bill provides that the exemption applies to personal information held by the FWC at any time, that it is subject to the Open Government Sunset Review Act, and that it will be repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.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 Florida Constitution.

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

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person and that providing access to public records is a duty of each agency.⁵

According to the Public Records Act, 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

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

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

agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁴

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

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

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹³ 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 School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹⁴ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.¹⁸

Applications for Licenses, Permits, and Certifications

Every person, unless exempt as provided in s. 379.353, F.S., taking game, fish, or fur-bearing animals within this state is required to have a hunting or fishing license, permit, or authorization number from FWC authorizing that activity.¹⁹ A person wishing to purchase certain recreational licenses through the FWC's website may do so by creating an account with its Recreational License Issuance Service (service). The information requested when registering with the service includes:²⁰

- Full name;
- Ethnicity;
- Gender;
- Height;
- Email;
- Social security number;
- Driver license number;
- Date of birth;
- Phone number; and
- Physical and mailing address.²¹

Once someone creates an account with the service, that person can then purchase various recreational hunting and fishing licenses and permits, make donations to youth programs, and purchase gift cards. FWC also offers specially priced resident licenses for persons with disabilities, which require both proof of residency and proof of disability.²²

Hunter Safety Certification

Subject to certain exceptions, a person born on or after June 1, 1975, may not be issued a license to take wild animal life using a firearm, gun, bow, or crossbow in this state without having first successfully completed a hunter safety course, and without having in his or her possession a hunter safety certification card.²³ The form FWC provides an applicant for enrollment in a hunter

¹⁷ FLA. CONST., art. I, s. 24(c).

¹⁸ Section 119.15(7), F.S.

¹⁹ Section 379.354(1), F.S.

²⁰ FWC, *Account Creation*, available at <https://public.myfwc.com/CrossDOI/PermitMe/Permittee/PermitteeProfile.aspx> (last visited Jan. 22, 2016).

²¹ See s. 379.352(2), F.S.

²² Section 379.353, F.S. See also FWC, *Persons with Disabilities Resident Hunting/Fishing License*, available at <http://myfwc.com/license/accessibility/license/> (last visited Jan. 22, 2016).

²³ Section 379.3581, F.S.

safety course requests the same information as is requested for registering with the Recreational License Issuance Service.²⁴

Boating Safety Certification

A person born on or after January 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or greater unless that person has in his or her possession, aboard the vessel, photographic identification and a boater safety identification card issued by the FWC which shows that he or she:

- Completed an FWC approved boater education course that meets certain qualifications;
- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.

To receive a boater education identification card, an applicant must submit a letter to the FWC containing the applicant's:

- Name;
- Date of birth;
- Return address;
- Phone number; and
- Proof of completion of the course.²⁵

III. Effect of Proposed Changes:

Section 1 creates s. 379.107, F.S. to provide a public records exemption for personal information obtained in connection with licensure.

The bill defines “commercial entity” to mean any:

- Corporation;
- Partnership;
- Limited partnership;
- Proprietorship;
- Sole proprietorship;
- Firm;
- Enterprise;
- Franchise; or
- Association.

The bill defines “personal information” to mean information that identifies an individual, including but not limited to, an individual's:

- Photograph;
- Social security number;
- Driver license number;

²⁴ FWC, *Request for Enrollment for Hunter Safety Class being held in Panama City*, available at https://public.myfwc.com/hgm/huntersafety/clsreq.aspx?p_class_id=39283 (last visited Jan. 22, 2016).

²⁵ FWC, *How to Get a Boater Education Identification Card*, available at <http://myfwc.com/boating/safety-education/id/> (last visited Jan. 22, 2016).

- 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.

The bill provides that personal information held by FWC for the following licenses, permits, and certifications issued by the FWC is confidential and exempt²⁶ from s. 119.07(1), F.S., and s. 24(a) of Art. I of the State Constitution:

- Recreational fishing, hunting, or use licenses and permits, or other noncommercial or nonprofessional licenses and permits;
- Hunter safety certification; and
- Boating safety certification.

The bill provides that information may only be disclosed as follows:

- For use by a court, law enforcement agency, or other agency, as defined in s. 119.011(2), F.S., 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 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 such entity in the normal course of its business, including identification or prevention of fraud, or matching, verifying, or retrieving information. The bill provides that this does not include the display or bulk sale of the legal residential address, date of birth, or telephone number of a license holder to the public or the distribution of such information to any customer not identifiable by the commercial entity.

The bill provides that the public records exemption applies to personal information held by the FWC at any time, including information held prior to the effective date of the bill.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2021, unless it is reviewed and saved from repeal through reenactment by the Legislature.

Section 2 creates an undesignated section of law providing a statement of public necessity for the public records exemption, as required by the Florida Constitution.

²⁶ As noted in the Section II of the analysis, information that is “confidential and exempt” is not subject to inspection by the public and may only be released to the persons or organizations designated in the statute.

The bill states that the Legislature finds it is a public necessity that personal information held by the FWC in connection with applications for licenses, permits, or certifications for recreational, nonprofessional, or noncommercial activities be made confidential and exempt from s. 119.07(1), F.S., and s. 24(a) of Article I of the State Constitution.

The bill states that:

- Under current law, personal information that applicants must provide to the FWC in order to apply for such licenses, permits, or certifications is a public record available for any purpose, and that such information can be obtained and used to perpetrate identity theft;
- The public availability of this personal information needlessly increases the risk of identity theft with those individuals who have an FWC issued license, permit, or certification; and
- These unnecessary risks would be diminished or eliminated if the FWC preserved the confidentiality of personal information held by the FWC relating to such licenses, permits, or certifications.

The bill provides that the Legislature finds it is a public necessity to make confidential and exempt from public records requirements personal information held by the FWC relating to licenses, permits, or certifications for recreational, nonprofessional, or noncommercial activities.

Section 3 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Pursuant to Article I, Section 24(c) of the State Constitution, all public records exemptions require a two-thirds vote by both the Senate and the House.

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:

The bill makes social security numbers confidential and exempt, however there is already a general exemption for social security numbers held by an agency in s. 119.071(5), F.S. The exemption in s. 119.071(5), F.S. also includes a commercial use exception.

The bill's commercial use exception appears be unclear. The commercial use exception appears to permit the display or bulk sale of the following: names, photographs, social security numbers, driver license numbers, e-mail or other electronic communication address; and medical or disability information.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following section of the Florida Statutes: 379.107.

This bill creates an undesignated section of Florida Law.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on January 27, 2016:

The CS makes the following changes to the bill:

- Defines “commercial entity;”
- Removes “invasive contacts” as one of the possible risks of disclosure of personal information;
- Provides in section 2 that personal information should be made “confidential and exempt” as opposed to “exempt,” which conforms the phrase to its usage in section 1 and further in section 2 of the bill;
- Authorizes certain personal information to be disclosed to commercial entities under specified circumstances; and
- Makes technical changes.

- B. **Amendments:**

None.