

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: SB 738

SPONSOR: Senators Fasano, Haridopolos, and others

SUBJECT: Criminal Justice Standards and Training Commission

DATE: March 2, 2005 REVISED: 03/15/05 03/22/05 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 738 provides that in appointing the five law enforcement officers who sit on the Criminal Justice Standards and Training Commission (CJSTC), the Governor shall choose from a list of six nominees submitted by the law enforcement organization, inclusive of charters and chapters, which the Public Employees Relations Commission (PERC) certifies as the collective bargaining agent for the largest number of certified bargaining units on the date the list is submitted.

The bill would limit the discretion the Governor currently has under s. 943.11, F.S., in appointing law enforcement members to the CJSTC, since the Governor would be required to choose those members from the list provided by the law enforcement organization certified by the PERC.

This bill substantially amends section 943.11, Florida Statutes.

II. Present Situation:

The Criminal Justice Standards and Training Commission

The Criminal Justice Standards and Training Commission is established pursuant to s. 943.11, F.S. The CJSTC is administratively housed in the Florida Department of Law Enforcement (FDLE). The FDLE's website describes the following primary responsibilities of the CJSTC:

- Establish uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement, and correctional and correctional probation officers.
- Establish and maintain officer training programs, curricula requirements, and certification of training schools and training school instructors.
- Certify officers who complete a Florida Basic Recruit Training Program, or who are diversely qualified through experience and training, and who meet minimum employment standards.
- Review and administer appropriate administrative sanctions in instances when an officer, a training school instructor, or a training school is found in violation of Florida Statutes and Commission standards.
- Promulgate rules and procedures to administer the requirements of Chapter 943.085 – 943.257, F.S.
- Conduct studies of compensation, education, and training for the correctional, correctional probation, and law enforcement disciplines.
- Maintain a central repository of records of all certified officers.
- Conduct quarterly meetings to discuss issues and make into law, policies that relate to officer standards and training.
- Develop, maintain, and administer the State Officer Certification Examination for criminal justice officers.¹

Section 943.11(1)(a), F.S., specifies that the CJSTC is to have nineteen members composed of the following persons:

- The Secretary of the Department of Corrections or designated assistant.
- The Attorney General or designated assistant.
- The Commissioner of Education or designated assistant.
- The Director of the Florida Highway Patrol.
- Three county sheriffs.
- Three chiefs of police.
- Four law enforcement officers who are not a sheriff or chief of police, and three of whom hold the rank of sergeant or below.
- Two correctional officers, including one administrator of a state correctional institution and one officer holding the rank of sergeant or below.
- One training center director.
- One person in charge of a county jail.
- One Florida resident who does not fall into any of the other categories.

¹ <http://www.fdle.state.fl.us/cjst/commission/index.html>

The positions filled by the sheriffs, chiefs of police, law enforcement officers, correctional officers, training center director, county jail administrator, and citizen member are appointed by the Governor. Section 943.11, F.S., requires a sheriff, chief of police, law enforcement officer, and correctional officer to have at least four years of experience as a law enforcement or correctional officer to be considered for appointment as a member of the CJSTC.

Public Employees Relations Commission

The Public Employees Relations Commission is established pursuant to ss. 447.201 and 447.205, F.S. The PERC is administratively housed within the Department of Management Services (DMS). The Office of Program Policy Analysis and Government Accountability describes PERC as “a neutral adjudicative body that promotes the state’s public policy of harmonious management/employee relations through resolution of public sector labor disputes, career service appeals, veterans’ preference appeals, drug testing cases, certain age discrimination cases, and whistleblower appeals.”²

The PERC’s website³ provides the following information regarding its duties as they relate to collective bargaining:

Public employees in the State of Florida have the constitutional right to collectively bargain. “Public employees” means employees of the state, counties, school boards, municipalities, and special taxing districts. This includes all fire, police, corrections, school teachers and support personnel, medical personnel, state troopers, toll collectors, sanitation employees, and clerical, etc. There are approximately 400,000 public employees of bargaining units throughout the State of Florida. The Commission holds hearings and resolves disputes about the composition of bargaining units and alleged unfair labor practices.

The Commission has an elections division that conducts elections when public employees express the desire to be represented by a union.

The Commission registers unions to qualify them to pursue representing employees.

The Commission has an impasse and mediation coordinator who oversees and orchestrates federally provided mediators and private employed arbitrators to resolve impasses in labor negotiations.

Collective Bargaining Agents for Law Enforcement Bargaining Units in Florida

The PERC staff was able to verify four collective bargaining agents for certified law enforcement bargaining units⁴ in Florida: the Florida Police Benevolent Association (PBA); the

² <http://www.oppaga.state.fl.us/profiles/4136/>

³ http://dms.myflorida.com/programscommissions/public_employees_relations_comm

⁴ According to the PERC staff, the term “law enforcement bargaining unit” is a commonly understood term of art in labor law. The PERC staff states that law enforcement bargaining units and correctional bargaining units are separately certified. Correctional bargaining units are not law enforcement bargaining units, though correctional bargaining units are commonly represented by collective bargaining agents that also represent law enforcement bargaining units, and correctional officers are commonly employed by sheriffs.

Fraternal Order of Police (FOP)⁵; the Teamsters; and the International Union of Police Associations (IUPA).

The PERC provided staff with certification reports (current as of February 24, 2005) regarding the certified law enforcement bargaining units represented by the four collective bargaining agents. Based on staff's hand-count of the certification number entries,⁶ it appears that the four collective bargaining agents represent the following number of law enforcement bargaining units:

- PBA: 213
- FOP: 104
- Teamsters: 13
- IUPA: 11

Based on the certification reports, it appears that the PBA and the IUPA are the only collective bargaining agents that represent both state and local law enforcement collective bargaining units.⁷ The number of members in a collective bargaining unit can vary from a handful of

⁵ The FOP differs somewhat from the PBA, the IUPA, and the Teamsters. According to the FOP website, the FOP consists of "lodges," which "are united by the parent organization known as the Grand Lodge." There is a national lodge and there are state lodges and local lodges. "[E]ach local lodge decides for itself whether to engage in collective bargaining, legal defense or function solely as a social, professional organization. Many lodges do both. However, this choice is left strictly to the members of each lodge with no interference or decision-making by the State Lodge, National Lodge, or members of other agencies." <http://fop31.org/whatis.htm>

⁶ The PERC staff informed committee staff that this is the correct method of obtaining the number of certified law enforcement bargaining units. Collective bargaining agents' published membership numbers may be different than the number in the certification reports. A collective bargaining agent may not count "inactive" certified law enforcement bargaining units it represents. An "inactive" unit would be one in which the unit is certified but the collective bargaining agent is not negotiating with the employer. The unit remains certified, unless the members of the unit seek decertification. An employer cannot seek the decertification of a unit.

⁷ A list of the local units represented by the four collective bargaining agents is too large to report in this analysis. However, regarding the state law enforcement bargaining units, there are currently three state contracts. The PBA represents a certified law enforcement bargaining unit consisting of all certified officers employed by the Florida Department of Lottery, including the classifications of Lottery Investigator, Lottery Special Agent, and Senior Lottery Special Agent, but excluding the Director of the Division of Security, Chief to the Bureau of Investigation, Chief of the Bureau of Security, and all other Lottery employees. The PBA also represents a certified law enforcement bargaining unit consisting of all professional sworn law enforcement officers classified as special agent or special agent trainee, but excluding all other employee classifications of the state and specifically excluding the classification of special agent supervisor and all classifications included in the state law enforcement unit. (The PBA also represents university and college certified law enforcement bargaining units but the PERC staff states that these units are separate from the state units. The employer of these units is the Board of Trustees.)

The IUPA represents a certified law enforcement bargaining unit consisting of all sworn law enforcement officers, including all supervisors, in the following classifications: Law Enforcement Officer, Law Enforcement Officer Corporal, Law Enforcement Officer Sergeant, Law Enforcement Wildlife Inspector, Law Enforcement Airline Pilot I, Law Enforcement Airline Pilot II, Law Enforcement Investigator I, and Law Enforcement Investigator II. The IUPA indicates that it represents employees (in the classifications noted) who work for the Florida Fish and Wildlife Commission, the Florida Highway Patrol, the State Fire Marshal, the Department of Environmental Protection and Park Police, the Department of Financial Services' Fraud Division, the Department of Juvenile Justice (Youth Custody Police Officers), the Department of Agriculture Law Enforcement, the Florida Department of Transportation (Motor Carrier Compliance Officers), the Office of the Attorney General's Medicaid Fraud Control Unit, the Department of Business and Professional Regulation (Alcohol, Beverages, and Tobacco), the School for the Deaf and Blind, and the Capitol Police (FDLE). Excluded from IUPA representation are

persons to several thousand persons. The agent's representation of a large number of collective bargaining units may or may not mean the agent represents a large number of members, and an agent could represent a small number of units with a large number of members.⁸

III. Effect of Proposed Changes:

Senate Bill 738 amends s. 943.11, F.S., to provide that, in appointing the five law enforcement officers who sit on the Criminal Justice Standards and Training Commission, the Governor shall choose from a list of six nominees submitted by the law enforcement organization, inclusive of charters and chapters, which the Public Employees Relations Commission certifies as the collective bargaining agent for the largest number of certified bargaining units on the date the list is submitted. The law enforcement organization must submit its list of six nominees at least three months before the expiration of the term of any law enforcement member.

The bill would limit the discretion the Governor currently has under s. 943.11, F.S., in appointing law enforcement members to the CJSTC, since the Governor would be required to choose those members from the list of six nominees presented to Governor by the law enforcement organization certified by the PERC as the collective bargaining agent for the largest number of certified bargaining units on the date the list is submitted.⁹

This bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Under the bill, the law enforcement organization responsible for submitting the nominees list to the Governor has discretion in choosing the nominees. If the bill became law, the law enforcement organization could choose only nominees represented by the law

managerial and confidential employees defined by the PERC, temporary employees, emergency employees, substitute employees, and all persons paid from OPS funds, as defined in s. 216.011(1)(x), F.S.

⁸ Membership data is not included in this analysis. The PERC does not have data on the number of employees in any unit, after the date of an election (if one was held) and the DMS only collects data on state units. The number of members a collective bargaining agent represents is not relevant to the bill's provisions, which speak only to certified law enforcement bargaining units.

⁹ Staff requested comments from the Governor's Office regarding the bill, but no comments were received from that office at the time this analysis was completed.

enforcement organization or only union members. However, the law enforcement organization could also make other choices. Therefore, it seems that constitutional issues,¹⁰ if any, would arise out of the choices made by the law enforcement organization, not out of the law itself, which does not mandate any particular choice by the law enforcement organization.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Public Employees Relations Commission has not indicated that this bill would have a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Representatives of or for the PBA, the IUPA, the FOP, and the Florida Sheriffs Association (FSA) have communicated their positions on the bill to committee staff. The PBA supports the bill. The following represents the PBA's position:

The criminal justice commission is made up of 19 members and only five of the members are below the rank of sergeant. In order for the rank and file members to have a voice on the commission the five appointees need to be familiar with officer discipline. To make sure the governor appoints knowledgeable officers, who are familiar with officer discipline, we want the organization that represents the most law enforcement officers to recommend appointments to the governor. This would be similar to the judicial nominating committee, and the way the [chiefs'] association and [sheriffs'] association [recommend] appointments to the governor.¹¹

The IUPA opposes the bill. The following represents the IUPA's position:

¹⁰ Frank Messersmith, registered lobbyist for the FSA, conveyed the opinion of an attorney in his office that "any requirement favoring or impeding union membership as a condition of participation on the CJSTC raises serious constitutional First Amendment associational questions as well as the spirit of the Florida Constitution's Right to Work provision." E-mail from Frank Messersmith, dated February 17, 2005. David Murrell, Executive Director of and registered lobbyist for the PBA, disagrees with this opinion. He indicates that this opinion presupposes the law enforcement organization's choice of nominees. Telephonic communication with David Murrell.

¹¹ E-mail from Ernie George, President of and registered lobbyist for the Florida PBA, dated February 15, 2005.

Presently, the Governor has the option to choose five officers from different agencies with different core missions from State, County, or Local Law Enforcement entities to appoint to the CJSTC. The officers' expertise can range from the most common of traffic violations to the most technical insurance fraud investigations and in all areas in between. SB 738 ... would limit the Governor's options by empowering only one bargaining unit to determine the pool of officers from which the Governor will make selections. To allow one bargaining unit the sole power of recommendation for the appointments of these five positions would be a disservice not only to the Law Enforcement communities but a disservice to Florida's citizenry....¹²

The FOP opposes the bill and its position appears to be similar to that of the IUPA.¹³

The FSA opposes the bill. The following represents the FSA's position:

At first blush, the Sheriffs read this as it seems on the surface; a turf fight between the law enforcement unions, and a process by which one can dominate the others. However, as the Sheriffs discussed this in their Midwinter Conference in Destin three weeks ago, they realized that if this language becomes law, then no one in the rank and file of law enforcement officers category will be able to participate on the CJSTC UNLESS they are a union member.

The Sheriffs do not think that is good public policy. The CJSTC is a public body and the law enforcement officers should not be required to join any organization in order to seek appointment and participate in the process.¹⁴

The FDLE staff has informed committee staff that the bill was presented to the CJSTC on February 17, 2005, but the CJSTC did not make a motion to support or oppose the bill (or any other bill).

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

¹² Letter from Joe Mosca, Vice-Chairman of IUPA-FL, dated February 18, 2005.

¹³ Telephonic communication with Lisa Henning, lobbyist for the FOP.

¹⁴ E-mail from Frank Messersmith, registered lobbyist for the FSA, dated February 16, 2005.

VIII. Summary of Amendments:

Barcode 072264 by Criminal Justice:

Amends process by which a certified law enforcement organization recommends appointment of 5 law enforcement and 1 correctional officer (of the rank of sergeant or below) for appointment to the CJSTC. A law enforcement organization eligible for certification must be a collective bargaining agent for certified law enforcement and correctional bargaining units coming under the jurisdiction of the PERC and must represent at least 20 percent of all such collective bargaining units. The number of appointees allotted to each eligible organization is directly proportionate to the aggregate number of such units represented by each eligible organization. The organization with the largest number of units picks first. Membership in a labor organization is not a requirement for placement on the list, and at least one of the nominees for the law enforcement appointments must be an officer who is not in a collective bargaining unit represented by the nominating organization.

Provides that the Governor must appoint the correctional officer and law enforcement officers from the organizations' nominee list, but provides an exception from this requirement: the Governor may receive and consider an application for appointment from any qualified law enforcement officer who seeks appointment and may appoint that officer.

Provides that the Governor shall appoint the 3 sheriffs who sit on the CJSTC from a list of 6 nominees submitted by the Florida Sheriff's Association and the 3 police chiefs who sit on the CJSTC from a list of 6 nominees submitted by the Florida Police Chief's Association. (WITH TITLE AMENDMENT)