

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1029 Carrying of Firearms in National Forests
SPONSOR(S): Baxley and others
TIED BILLS: IDEN./SIM. BILLS: SB 1546

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Criminal Justice Committee, 7 Y, 0 N, Cunningham, Kramer. Row 2: 2) Environmental Regulation Committee, Perkins, Kliner. Row 3: 3) Justice Council. Row 4: 4). Row 5: 5).

SUMMARY ANALYSIS

Section 790.11, F.S., currently prohibits persons from carrying any gun or firearm of any description within the limits of a national forest area (except during hunting season), without first obtaining a permit. Section 790.12, F.S. provides that the board of county commissioners of the county where such national forest area is located may grant a special permit for the carrying of firearms. Any person who violates any of the above provisions commits a second degree misdemeanor.

In regards to state parks, Department of Environmental Protection Rule 62D-2.014(10), F.A.C., currently prohibits persons from using, carrying, or possessing firearms of any type in any state park unless used for authorized resource management.

This bill repeals the statutes prohibiting persons from carrying firearms in national forests, authorizing special permits for the carrying of firearms in national forests, and providing penalties for violations. The bill also directs the Department of Environmental Protection to adopt amendments to Rule 62D-2.014(10), F.A.C., to repeal the provision prohibiting persons from using, carrying, or possessing firearms in state parks.

This bill takes effect October 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### National Forests & Wildlife Management Areas

The U.S. Department of Agriculture (USDA) Forest Service is a Federal agency that manages public lands in national forests and grasslands.<sup>1</sup> The Forest Service manages public lands, known collectively as the National Forest System, located in 44 States, Puerto Rico, and the Virgin Islands.<sup>2</sup> Nationwide, there are 155 national forests, which comprise 8.5 percent of the total land area in the United States.<sup>3</sup>

There are four national forests in Florida: Apalachicola, Choctawhatchee, Ocala, and Osceola National Forest.<sup>4</sup> According to the U.S. Department of Agriculture Forest Service, all of the National Forests in Florida are also Wildlife Management Areas (WMAs), which are regulated, in part, by Florida's Fish and Wildlife Conservation Commission (FWCC). The result of this dual-designation is that FWCC regulates the *wildlife*, while the USDA Forest Service regulates the *land* (e.g. resources, timber, hiking trails, etc...).

There do not appear to be any federal regulations specifically prohibiting persons from carrying firearms in National Forests. However, Title 36 of the Code of Federal Regulations, relating in part to National Forests, prohibits persons from *discharging* a firearm or any other implement capable of taking human life causing injury, or damaging property in or within 150 yards of a residence, building, campsite, developed recreation site, or occupied area; across or on a National Forest System road or a body of water adjacent thereto; or in any manner or place whereby any person or property is exposed to injury or damage as a result in such discharge; or into or within any cave.<sup>5</sup> Additionally, in regards to hunting laws, the federal government defers to state hunting laws.<sup>6</sup>

There do not appear to be any state statutes specifically prohibiting persons from carrying firearms in WMAs. However, FWCC's rules currently prohibit persons from possessing any gun on any WMA during any period in which hunting by the use of a gun is prohibited unless otherwise authorized by permit from the executive director.<sup>7</sup> As a constitutionally created agency, the FWCC is free to exercise its constitutional responsibilities, and the Legislature may only "enact laws in aid of" the FWCC "which are not inconsistent with" those constitutional responsibilities. The FWCC is also exempt from Chapter 120, F.S. (the Administrative Procedure Act) in the exercise of those responsibilities. Court rulings consistently hold that the Legislature is constitutionally prohibited adopting statutes in conflict with FWCC rules.<sup>8</sup>

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<sup>1</sup> <http://www.fs.fed.us/aboutus/meetfs.shtml>

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

<sup>3</sup> *Id.*

<sup>4</sup> <http://www.fs.fed.us/r8/florida/about>

<sup>5</sup> 36 C.F.R. 261.10(d)

<sup>6</sup> 36 C.F.R. 261.8

<sup>7</sup> Rule 68A-15.004(6), F.A.C.

<sup>8</sup> *Airboat Ass'n of Florida, Inc. v. Florida Game and Fresh Water Fish Commission*, 498 So.2d 629 (Fla.3 DCA 1986); *Whitehead v. Rogers*, 223 So.2d 330 (Fla.1969); *State ex rel. Griffin v. Sullivan*, 158 Fla. 870, 30 So.2d 919 (1947); *Price v. City of St. Petersburg*, 158 Fla. 705, 29 So.2d 753 (1947).

Section 790.11, F.S., currently prohibits persons from carrying any gun or firearm<sup>9</sup> of any description within the limits of a National Forest (except during hunting season), without first obtaining a permit.<sup>10</sup> Section 790.12, F.S. provides that the board of county commissioners of the county where such National Forest area is located may grant a special permit for the carrying of firearms.<sup>11</sup> However, the officer or employee of the United States Government in charge of such National Forest area must first recommend in writing that the permit should be granted.<sup>12</sup> Section 790.14, F.S., states that any person who violates any of the above provisions commits a second degree misdemeanor<sup>13</sup>.

### State Parks

There do not appear to be any state statutes specifically prohibiting persons from carrying firearms in *state parks*. However, the Department of Environmental Protection (DEP) has adopted rules that prohibit persons from using, carrying, or possessing firearms of any type in any *state park*<sup>14</sup> unless used for authorized resource management.<sup>15</sup>

### Effect of the Bill

HB 1029 repeals ss. 790.11, 790.12, and 790.14, F.S., prohibiting persons from carrying firearms in *national forests*, authorizing special permits for the carrying of firearms in national forests, and providing penalties for violations. The bill amends the "Lawful ownership, possession, and use of firearms and other weapons" statute (s. 790.25, F.S.), deleting the references to ss. 790.11, 790.12, and 790.14, F.S.

HB 1029 also directs DEP to adopt amendments to Rule 62D-2.014(10), F.A.C., to repeal the provision prohibiting persons from using, carrying, or possessing firearms in state parks.

### C. SECTION DIRECTORY:

**Section 1.** Repeals ss. 790.11, 790.12, and 790.14, F.S.

**Section 2.** Amending s. 790.25, F.S., correcting cross-references.

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<sup>9</sup> Section 790.001, F.S., defines "firearm" as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

<sup>10</sup> The statute provides an exception for carrying a gun or firearm on state roads when securely locked within a vehicle. See s. 790.11, F.S.

<sup>11</sup> If a national forest lies in more than one county, the permit must be granted by the board of county commissioners of each of the several counties involved before it is valid. See s. 790.12, F.S.

<sup>12</sup> s. 790.12, F.S. In 1997, the Office of General Counsel of the USDA issued a legal opinion regarding s. 790.012, F.S., (requiring counties to get a written recommendation from the U.S. Government employee in charge of the National Forest before issuing a permit allowing someone to carry a firearm in a National Forest). The opinion states that "Nothing in the language of s. 790.12 imposes an explicit or implied duty upon the Forest Service to make such recommendations. Furthermore, even assuming *arguendo* that s. 790.12 could reasonably be interpreted as requiring the Forest Service to make such recommendations, the Supremacy Clause of the United States Constitution would prevent its application." The opinion went on to recommend that the federal government not make any recommendations relating to permits discussed in s. 790.12, F.S.

<sup>13</sup> A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and by a fine of up to \$500. See ss. 775.082 and 775.083, F.S.

<sup>14</sup> Florida's state park system is one of the largest in the country with 159 parks spanning more than 723,000 acres and 100 miles of beach. State parks include all real property in the State of Florida under the jurisdiction of the Florida Department of Environmental Protection, Division of Recreation and Parks, or which may come under its jurisdiction regardless of the property's designation. Among the designations included in the state park system are state park, state recreation area, state archaeological site, state historic site, state geological site, state botanical site, state preserve, state garden, state museum, state reserve, state cultural site, state wildlife park, state folk cultural center, and state trail. See Rule 62D-2.013(1), F.A.C.

<sup>15</sup> Rule 62D-2.014(10), F.A.C.

**Section 3.** Directing the Department of Environmental Protection to amend rules in the Florida Administrative Code.

**Section 4.** This act takes effect October 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

As noted above, s. 790.12, F.S. provides that the board of county commissioners of the county where such national forest area is located may grant a special permit for the carrying of firearms. Counties may lose permit revenue to the extent that persons are no longer required to obtain a permit to carry a firearm in a national forest. However, as noted in footnote 11 above, the federal government has, since 1997, declined to recommend that counties issue permits to carry firearms in National Forests. Thus, it would not appear that counties would incur a significant fiscal impact from a loss of permit revenue.

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 because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

This bill directs the Department of Environmental Protection to adopt amendments to Rule 62D-2.014(1), F.A.C., to repeal the provision that no person shall use, carry, or possess firearms in state parks.

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

Comments by Criminal Justice Committee:

As noted above, the FWCC currently has a rule prohibiting persons from possessing any gun on any WMA during any period in which hunting by the use of a gun is prohibited unless otherwise authorized by permit from the executive director. Because all National Forests in Florida are also WMAs, the FWCC rule would apply in National Forests. Thus, even though the bill has the effect of removing the firearm prohibition in regards to National Forests, people would still be prohibited from carrying firearms in WMAs (and therefore National Forests). In order to effectuate the purpose of the bill (i.e. remove the prohibition on carrying firearms in National Forests), the bill should direct the FWCC to amend its rules (e.g. the bill could direct the FWCC to amend its rules to allow firearms in WMAs that are also National Forests).

The FWCC reports that, effective July 1, 2006, an amended version of its firearms rule will take effect. The amended rule would allow persons with concealed weapons permits to carry firearms in WMAs at any time. This amended rule would still conflict with the provisions of the bill in the manner described above.

It should be noted that repealing the statutes and rules prohibiting persons from carrying firearms in National Forests/WMAs and state parks does not mean that persons will automatically be able to openly carry weapons in such areas, carry concealed weapons in such areas without a permit, etc... The laws that apply to the carrying, use, etc... of firearms would apply (e.g. section 790.053, F.S., prohibiting persons from openly carrying firearms, would apply; s. 790.06, F.S., requiring a permit to carry a concealed weapon, would apply and require anyone in a National Forest/WMA or state park to have a permit to carry a concealed weapon).

It should also be noted that the bill does not affect the provisions of 36 C.F.R. 261.10(d), discussed above, relating to the *discharge* of a firearm in a National Forest.

Comments by Environmental Regulation Committee:

As stated earlier, the constitutionally created agency FWCC is free to exercise its constitutional responsibilities, and the Legislature may only "enact laws in aid of" the FWCC "which are not inconsistent with" those constitutional responsibilities. The FWCC is also exempt from Chapter 120, F.S. (the Administrative Procedure Act) in the exercise of those responsibilities. Court rulings consistently hold that the Legislature is constitutionally prohibited adopting statutes in conflict with FWCC rules.<sup>16</sup>

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

N/A

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<sup>16</sup> Airboat Ass'n of Florida, Inc. v. Florida Game and Fresh Water Fish Commission, 498 So.2d 629 (Fla.3 DCA 1986); Whitehead v. Rogers, 223 So.2d 330 (Fla.1969); State ex rel. Griffin v. Sullivan, 158 Fla. 870, 30 So.2d 919 (1947); Price v. City of St. Petersburg, 158 Fla. 705, 29 So.2d 753 (1947).