

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1271 CS

Division of Alcoholic Beverages and Tobacco

SPONSOR(S): Cannon

TIED BILLS:

IDEN./SIM. BILLS: SB 2412

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>State Administration Appropriations Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>Rayman</u>	<u>Belcher</u>
3) <u>Justice Council</u>	<u>10 Y, 0 N</u>	<u>Cunningham</u>	<u>De La Paz</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division), housed within the Department of Business and Professional Regulation (DBPR), licenses the alcoholic beverage and tobacco industries, collects and audits taxes and fees paid by the licensees, and enforces the laws and regulation of the alcoholic beverage and tobacco industries.

Currently, employees of the Division may be certified as law enforcement officers. Such Alcoholic Beverages and Tobacco (AB&T) officers have *felony* arrest powers statewide. AB&T officers also have all of the powers of a deputy sheriff to:

- Enforce all criminal laws of the state within specified jurisdictions where the Division is a party to a written mutual-aid agreement with a state agency, sheriff, or municipal police department; and
- Investigate, enforce, and prosecute, throughout the state, violations and violators of:
 - Laws *relating to alcoholic beverages and tobacco products*; and
 - All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the Division.

This bill provides that AB&T officers have the same authority as that given to law enforcement officers under chapter 901, F.S. (relating to warrants, arrests, searches, detentions, etc.), and have statewide jurisdiction. The bill specifies that the primary responsibilities of an AB&T officer include enforcing the laws relating to alcoholic beverages and tobacco products, and the secondary responsibility to enforce all other state laws, provided the AB&T officer exercises the powers of a deputy sheriff in coordination with the local sheriff's office.

The DBPR indicates there is no significant fiscal impact on the state.

The bill provides an effective date of July 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 4/20/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill expands the powers and jurisdiction of a law enforcement officer employed by the Division.

Maintain Public Security: This bill expands the powers and jurisdiction of a law enforcement officer employed by the Division.

B. EFFECT OF PROPOSED CHANGES:

The Division, housed within the DBPR, licenses the alcoholic beverage and tobacco industries,¹ collects and audits taxes and fees paid by the licensees, and enforces the laws and regulation of the alcoholic beverage and tobacco industries, pursuant to chapters 210, 561-565, and 567-569, F.S.² The Division carries out these responsibilities through three bureaus: Licensing, Auditing, and Enforcement.³

Currently, employees of the Division may be certified as law enforcement officers under chapter 943, F.S.⁴ (for purposes of this analysis, such employees will be referred to as AB&T officers). AB&T officers currently have statewide *felony* arrest powers, described in s. 901.15, F.S., which authorize them to arrest a person without a warrant if:

- they reasonably believe that a felony involving violence has been or is being committed and that the person to be arrested has committed or is committing a felony;
- while engaged in the exercise of his or her state law enforcement duties, the AB&T officer reasonably believes that a felony has been or is being committed; or
- a felony warrant for the arrest has been issued and is being held for execution by another peace officer.⁵

AB&T officers also have all of the powers of a deputy sheriff to:

- Investigate, enforce, and prosecute, throughout the state, violations and violators of:
 - o Parts I and II of chapter 210, F.S. (relating to tax on tobacco products); part VII of chapter 559, F.S. (relating to licensing by the DBPR); and chapters 561-569, F.S. (relating to alcoholic beverages and tobacco products); as well as any laws which the Division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce.
 - o All other state laws, provided that the employee exercises the powers of a deputy sheriff, only after consultation and in coordination with the appropriate local sheriff's office, and only if the violation could result in an administrative proceeding against a license or permit issued by the Division.
- Enforce all criminal laws of the state within specified jurisdictions when the Division is a party to a written mutual-aid agreement with a state agency, sheriff, or municipal police

¹ Florida has approximately 71,000 active alcoholic beverage and tobacco license holders.

² <http://www.myflorida.com/dbpr/abt/index.shtml>

³ *Id.*

⁴ In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement, establishes uniform minimum standards for the employment and training of law enforcement officers (LEO). Every prospective LEO must successfully complete a CJSTC-developed Basic Recruit Training Program and pass a statewide certification exam in order to receive their certification. <http://www.fdle.state.fl.us/cjst/commission/index.html>

⁵ See ss. 20.165 and 901.15, F.S.

department, or when the Division participates in the Florida Mutual Aid Plan during a declared state of emergency.⁶

A review of the above authorities reveals that AB&T officers do not currently have the authority to enforce certain laws or respond (e.g. pursue, detain, and arrest) to certain crimes. For example, an AB&T officer may not enforce misdemeanor violations when not on the premises of a Division-licensed entity. In such instances, the AB&T officer would be limited to simply notifying local law enforcement of the crime. This limited authority has also caused concern in that AB&T officers must consider whether responding to a crime is within the scope of their authorized duties, whether the Division would support their actions, whether they will incur any liability for their actions, etc...

Effect of the Bill

The bill provides that Division employees serving as law enforcement officers must meet the qualifications for employment as a law enforcement officer set forth under s. 943.13, F.S.,⁷ and must be certified as a law enforcement officer by the Florida Department of Law Enforcement (FDLE). This portion of the bill appears to have little effect in that AB&T officers who are currently certified as law enforcement officers are certified as such by FDLE and must meet the requirements of s. 943.13, F.S.

The bill also provides that AB&T officers have the same authority as that given to law enforcement officers under chapter 901, F.S. (relating to warrants, arrests, searches, detentions, etc.), and have statewide jurisdiction. The bill specifies that AB&T officers also have the arrest authority provided for state law enforcement officers in s. 901.15, F.S. (discussed above). The bill further provides that an AB&T officer has full law enforcement powers granted to other peace officers in the state, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

Although the bill expands an AB&T officer's powers and jurisdiction, the bill specifies that the primary responsibilities of an AB&T officer include enforcing the laws relating to Parts I and II of chapter 210, F.S. (relating to tax on tobacco products); part VII of chapter 559, F.S. (relating to licensing by the DBPR); and chapters 561-569, F.S. (relating to alcoholic beverages and tobacco products); as well as any laws which the Division, all state law enforcement officers, or beverage enforcement agents are specifically authorized to enforce. An AB&T officer's secondary responsibilities include enforcing all other state laws, provided the AB&T officer exercises the powers of a deputy sheriff in consultation or coordination with the local sheriff's office.

C. SECTION DIRECTORY:

Section 1. Amends s. 20.165, F.S., requiring AB&T officers serving as law enforcement officers to meet certain qualifications; requiring AB&T officers to be certified as law enforcement officers; providing AB&T officers with certain powers, authority, and jurisdiction; and specifying primary and secondary responsibilities of AB&T officers.

Section 2. Provides an effective date of July 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁶ s. 20.165, F.S.

⁷ Section 943.13, F.S. provides minimum employment qualifications for officers.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Business and Professional Regulation indicates there is no significant fiscal impact on the state.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Criminal Justice Committee adopted a strike-all amendment to the bill and reported the bill favorably with committee substitute. The strike-all amendment provides that an AB&T officer's primary responsibilities also include enforcing all other state laws, provided the AB&T officer exercises the powers of a deputy sheriff in consultation or coordination with the local sheriff's office.

The staff analysis reflects the CS.

On April 17, 2006, the State Administration Appropriations Committee adopted a strike-all and amendment to the strike-all and reported the bill favorably with committee substitute. The amendments provide that AB&T Officers' secondary responsibility is to enforce state laws other than those relating to alcoholic beverages & tobacco products.

The staff analysis reflects the Committee Substitute.