

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 669 CS

Criminal Justice Standards and Training Commission

**SPONSOR(S):** Dean and others

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2032

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Criminal Justice Appropriations Committee</u>	<u>5 Y, 0 N</u>	<u>Burns</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

In 2004, Congress passed the "Law Enforcement Officers Safety Act of 2004". According to the act, notwithstanding any other provision of the law of any state or political subdivision, an individual who is a "qualified law enforcement officer" or "qualified retired law enforcement officer" as defined by the act and who is carrying specified identification is authorized to carry a concealed firearm. Under this act, the definition of the term "qualified retired law enforcement officer" includes a requirement that the person has met the state's standards for training and qualification for active law enforcement officers to carry firearms. Florida currently does not have a statewide standard for training and qualifications in firearms for active law enforcement officers. The Florida Department of Law Enforcement (FDLE) has issued proposed rules which would create a statewide standard for active officers but those rules are not yet in effect.

HB 669 requires the Criminal Justice Standards and Training Commission within FDLE to adopt rules establishing the manner in which the federal Law Enforcement Officers Safety Act of 2004 will be implemented in the state. The bill requires the commission to develop and authorize a uniform proficiency verification card to be issued to persons who achieve a passing score on the firing range testing component of the minimum firearms proficiency course for active law enforcement officers. The card will indicate the person's name and the date on which he or she achieved the passing score. Such a card will be issued only by firearms instructors certified by the commission.

The bill allows facilities operating firing ranges which use certified firearms instructors to open the firing range to other persons who wish to demonstrate their ability to achieve a passing score on the firing range proficiency course. All costs associated with the demonstration by any such person that he or she meets the requirements of the firing range testing component of the minimum firearms proficiency course will be at the expense of the person being tested.

The bill will have a minimal fiscal impact on state expenditures.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires the Criminal Justice Standards and Training Commission to develop a manner of implementing the federal Law Enforcement Officers Safety Act of 2004 which authorizes qualified law enforcement officers and qualified retired law enforcement officers to carry concealed firearms.

#### B. EFFECT OF PROPOSED CHANGES:

*Criminal Justice Standards and Training Commission:* The Criminal Justice Standards and Training Commission (CJSTC) is established within the Florida Department of Law Enforcement, pursuant to s. 943.11, F.S. It has a number of responsibilities relating to the training, certification, and discipline of law enforcement officers, correctional officers, and correctional probation officers.<sup>1</sup> The CJSTC requires training in the use of firearms and a demonstration of proficiency in order to receive initial law enforcement officer, correctional officer or correctional probation officer certification.<sup>2</sup> After an officer is certified, there are no statewide standards for firearms proficiency. Firearms training and proficiency standards are then the responsibility of the employing agency.

The CJSTC also certifies individuals who provide instruction in law enforcement officer and correctional officer training courses.<sup>3</sup> The CJSTC certifies instructors to teach specialized topics. For example, the commission certifies vehicle operations instructors, defensive tactics instructors and firearms instructors.<sup>4</sup>

*Concealed weapons:* Section 790.01, F.S. provides that it is a first degree misdemeanor to carry a concealed weapon and a third degree felony to carry a concealed firearm. The provision does not apply to a person licensed to carry a concealed weapon or firearm. The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or firearms to qualified persons.<sup>5</sup> There are a number of statutory requirements that must be met before a license can be issued including the following:

- The applicant is a resident of the United States;
- The applicant is 21 years of age or older;
- The applicant does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- The applicant has not been convicted of a felony or other disqualifying offense;
- The applicant demonstrates competence by completing specified training;
- The applicant has not recently been committed to a mental institution;

Upon approval by the department and payment of an \$85 fee, the applicant is issued a license card that the applicant must carry when possessing a concealed weapon or firearm. The license is valid for 5 years. Even if a person holds a concealed weapon license, there are a large number of places that the licensee is prohibited from carrying a concealed weapon or firearm.<sup>6</sup>

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<sup>1</sup> s. 943.12, F.S.

<sup>2</sup> See 11B-35.0024, F.A.C.

<sup>3</sup> S. 943.14(3), F.S.

<sup>4</sup> See 11B-20.0013(3)(b) and (c), F.A.C. and 11B-20.0014(2)(c) and (d), F.A.C.

<sup>5</sup> See generally, S. 790.06, F.S.

<sup>6</sup> s. 790.06(12), F.S.

A law enforcement officer, correctional officer or correctional probation officer holding active certification from the CJSTC is exempt from the above licensing requirements.<sup>7</sup> If off duty, the officer is required to have a license in order to carry a concealed firearm or have the permission of his or her superior officer.<sup>8</sup> A law enforcement, correctional or correctional probation officer who wishes to receive a concealed weapons or firearm license is exempt from the background investigation and the fees for such investigation.<sup>9</sup> A retired law enforcement, correctional or correctional probation officer is exempt from the required fees and background investigation for one year after his or her retirement.<sup>10</sup>

Currently, Florida law permits a non-resident of Florida to carry a concealed weapon or firearm within the state if he or she has a license from a state that honors Florida licenses. The Division of Licensing within the Department of Agriculture and Consumer services has established reciprocity agreements with 29 states.<sup>11</sup>

*Law Enforcement Officers Safety Act of 2004:* In 2004, Congress passed the “Law Enforcement Officers Safety Act of 2004”.<sup>12</sup> According to the act, notwithstanding any other provision of the law of any state or political subdivision, an individual who is a “qualified law enforcement officer” and who is carrying identification issued by the officer’s employing agency may carry a concealed firearm. The term qualified law enforcement officer is defined to mean an employee of a governmental agency who:<sup>13</sup>

(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

(2) is authorized by the agency to carry a firearm;

(3) is not the subject of any disciplinary action by the agency;

(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

(5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(6) is not prohibited by Federal law from receiving a firearm.

The bill also provides that notwithstanding any state or local law, a “qualified *retired* law enforcement officer” that is carrying identification discussed further below is permitted to carry a concealed firearm.

The act defines the term “qualified retired law enforcement officer” to mean an individual who:<sup>14</sup>

(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

(2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

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<sup>7</sup> s. 790.06(5)(b), F.S.

<sup>8</sup> See ss. 790.052 and 790.06, F.S.

<sup>9</sup> s. 790.06(5)(b), F.S.

<sup>10</sup> s. 790.06(5)(b), F.S.

<sup>11</sup> [http://licgweb.doacs.state.fl.us/news/concealed\\_carry.html](http://licgweb.doacs.state.fl.us/news/concealed_carry.html)

<sup>12</sup> H.R. 218; 18 U.S.C 926B; 18 U.S.C. 926C.

<sup>13</sup> 18 U.S.C. 926B(c)

<sup>14</sup> 18 U.S.C. 926C(c)

- (3) (A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or
- (B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;
- (4) has a nonforfeitable right to benefits under the retirement plan of the agency;
- (5) *during the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms;*
- (6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- (7) is not prohibited by Federal law from receiving a firearm.

The act specifies that the identification required to be carried by the retired law enforcement officer is:

- (1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, within one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or
- (2) (A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and
- (B) a certification issued by the State in which the individual resides that indicates that the individual has, within one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

Until recently, Florida has not had a statewide standard for firearms proficiency for active law enforcement officers. The responsibility for ensuring firearms proficiency has rested with the employing law enforcement agency. According to a recent Attorney General's opinion, "retired law enforcement officers may carry concealed weapons permits pursuant to 18 U.S.C. 926C even though the state does not currently have statewide firearms training and qualifications standards for active law enforcement officers."<sup>15</sup> On December 30, 2005, FDLE published proposed rules which will create a statewide proficiency standard for active law enforcement officers.<sup>16</sup> According to FDLE, this will facilitate retired law enforcement officer's attempts to demonstrate that they fall under HR 218 because they will be able to demonstrate that they are able to pass their state's proficiency standard for active officers.<sup>17</sup> The rule will become effective on March 27, 2006 and beginning on July 1, 2006, law enforcement officers will be required to qualify under the new standards.

*Effect of HB 669:* HB 669 requires the CJSTC to adopt rules establishing the manner in which the federal Law Enforcement Officers Safety Act of 2004 will be implemented in the state. The bill requires the commission to develop and authorize a uniform proficiency verification card to be issued to persons

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<sup>15</sup> AGO 2005-45, August 2, 2005.

<sup>16</sup>Volume 31, Number 52, F.A.W. (December 30, 2005)

<sup>17</sup> <http://www.fdle.state.fl.us/hr218/attach/hr218update-fall05.html>

who achieve a passing score on the firing range testing component of the minimum firearms proficiency course for active law enforcement officers. The card will indicate the person's name and the date on which he or she achieved the passing score. Such a card will be issued only by firearms instructors certified by the commission.

The bill also provides that facilities operating firing ranges for active law enforcement officers may open the firing range to other persons who wish to demonstrate their ability to achieve a passing score on the firing range proficiency course. All costs associated with the demonstration by any such person that he or she meets the requirements of the firing range testing component of the minimum firearms proficiency course will be at the expense of the person being tested.

**C. SECTION DIRECTORY:**

Section 1. Creates s. 943.132, F.S. to implement federal Law Enforcement Officers Safety Act of 2004.

Section 2. Provides effective date of July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

There would be a minimal indeterminate loss of revenue.

2. Expenditures:

According to the fiscal analysis provided by FDLE, this bill will have a "negligible" fiscal impact on the agency.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

A qualified retired law enforcement officer, as this term is defined in the Law Enforcement Officers Safety Act, with a firearms proficiency verification card issued by a firearm instructor will be authorized to carry a concealed firearm without paying the fee associated with the state permit.

**D. FISCAL COMMENTS:**

See above.

**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 an 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:

The bill requires the CJSTC to adopt rules relating to the carrying of concealed firearms by active and retired law enforcement officers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

The Criminal Justice Committee amended the bill to change a reference from “range instructors” to “firearms instructors” in conformity with FDLE’s administrative rules. The bill was also amended to clarify that any person who receives a passing score on the firing range testing component of the minimum firearms proficiency court for active law enforcement officers can obtain a uniform proficiency verification card.