

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.¹ 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.² Until recently, Florida did not have 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. However, beginning July 1, 2006, law enforcement officers have been required to qualify under a statewide standard.³ According to the applicable rule, "a certified law enforcement officer who fails to demonstrate proficiency skills on the required firearms qualification standard shall not perform the duties of a sworn officer."⁴

The CJSTC also certifies individuals who provide instruction in law enforcement officer and correctional officer training courses.⁵ The CJSTC certifies instructors to teach specialized topics. For example, the commission certifies vehicle operations instructors, defensive tactics instructors and firearms instructors.⁶

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.⁷ 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;

¹ s. 943.12, F.S.

² See 11B-35.0024, F.A.C.

³ See 11B-27.00212, F.A.C.

⁴ See 11B-27.00212(15)(a), F.A.C.

⁵ S. 943.14(3), F.S.

⁶ See 11B-20.0013(3)(b) and (c), F.A.C. and 11B-20.0014(2)(c) and (d), F.A.C.

⁷ See generally, S. 790.06, F.S.

- 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.⁸

A law enforcement officer, correctional officer or correctional probation officer holding active certification from the CJSTC is exempt from the above licensing requirements.⁹ 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.¹⁰ 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.¹¹ 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.¹²

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. As of January 5, 2007, the Division of Licensing within the Department of Agriculture and Consumer services has established reciprocity agreements with 30 states.¹³

Law Enforcement Officers Safety Act of 2004: In 2004, Congress passed the “Law Enforcement Officers Safety Act of 2004”, commonly known as HR 218.¹⁴ 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:¹⁵

- (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.

⁸ s. 790.06(12), F.S.

⁹ s. 790.06(5)(b), F.S.

¹⁰ See ss. 790.052 and 790.06, F.S.

¹¹ s. 790.06(5)(b), F.S.

¹² s. 790.06(5)(b), F.S.

¹³ http://licgweb.doacs.state.fl.us/news/concealed_carry.html

¹⁴ H.R. 218; 18 U.S.C 926B; 18 U.S.C. 926C.

¹⁵ 18 U.S.C. 926B(c)

The act defines the term “qualified retired law enforcement officer” to mean an individual who:¹⁶

- (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;
- (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.

Effect of HB 143: HB 143 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 who achieve a passing score on the firing range testing component of the minimum firearms proficiency course as utilized in the minimum firearms proficiency course applicable to 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.

¹⁶ 18 U.S.C. 926C(c)

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, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There would be an indeterminate loss of revenue to the Department of Law Enforcement and the Department of Agriculture. However, the impact is likely to be minimal.

2. Expenditures:

According to the fiscal analysis provided by FDLE, there will be only minimal costs associated with development and implementation of the firearms proficiency verification card.

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.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement:

The bill is necessary in order to insure that HR 218 can be implemented here in Florida

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES