

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 151 Radio Equipment Using Law Enforcement Frequencies

SPONSOR(S): Reed

TIED BILLS: **IDEN./SIM. BILLS:** SB 522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Constitution & Civil Law</u>	<u>9 Y, 0 N</u>	<u>Davis</u>	<u>Birtman</u>
2) <u>Safety & Security Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
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SUMMARY ANALYSIS

The bill amends section 843.16, Florida Statutes, to provide an exception that allows sworn law enforcement officers or emergency rescue personnel to install or transport radio equipment using specified frequencies while using personal transportation to and from work.

There is no anticipated fiscal impact on either state or local government.

The bill provides an effective date of July 1, 2008.

On January 23, 2008, the Constitution and Civil Law Committee adopted an amendment to define the terms “sworn law enforcement officer” and “emergency service employee.” *See Amendments Section* of the analysis for examination of the amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security- The bill allows any sworn law enforcement officer or emergency rescue personnel to install or transport radio equipment using assigned frequencies of law enforcement officers while using personal transportation to and from work.

B. EFFECT OF PROPOSED CHANGES:

Background

Currently, s. 843.16, F.S., prohibits the installation or the transport of frequency modulation radio receiving equipment tuned to frequencies assigned to police or law enforcement officers or fire rescue personnel of any city, or county of the state, or to the state and any of its agencies except in emergency or crime watch vehicles.

An “emergency vehicle” is: A.) Any motor vehicle used by any law enforcement officer or employee of any city, any county, the state, the Federal Bureau of Investigation, or the Armed Forces of the United States while on official business, B.) Any fire department vehicle, C.) Any motor vehicle designated as an emergency vehicle by the Department of of Highway Safety and Motor Vehicles, D.) Any vehicle designed as an emergency vehicle by the sheriff, fire chief or chief of police. See s. 843.16(2)(a), F.S.

A “crime watch vehicle” means any motor vehicle used by any person participating in a citizen crime watch or neighborhood watch program when that program is approved by the sheriff or police chief for that neighborhood. See s. 843.16(2)(b), F.S.

The prohibition does not apply to valid holders of an amateur radio operator or station license, full time newspaper reporters and alarm system contractors. See s. 843.16(3), F.S. The penalties for violating these provisions are a first degree misdemeanor punishable as provided in ss. 775.082, F.S. or 775.083, F.S.¹

According to several police organizations,² the original intent of s. 843.16, F.S., was to punish those who used or possessed radio equipment using police frequencies who were engaged in the commission of a crime. The overall goal was to enhance the penalty and decrease the interception of police communications.

¹ Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a definite term of imprisonment not to exceed one year.

Section 775.083, F.S., provides that a person sentenced to a first degree misdemeanor may also be fined an amount not to exceed \$1000.

² The following organizations provided input as to the original intent of s.843.16, F.S.: Florida Police Chiefs Association, Florida Police Benevolent Association, Tampa Police Department, and Tallahassee Police Department.

Today, according to several police organizations the statute in its application has become too restrictive as there are several police departments across the state that have officers who drive their personal cars to and from work and in the process are transporting their police radios with them. It is currently a misdemeanor for a sworn law enforcement officer or emergency rescue personnel to do what is common practice.

The Bill

The bill amends section 843.16, F.S., to allow any sworn law enforcement officer³ or emergency rescue personnel⁴ of any city or county of the state or of the state and any of its agencies while using personal transportation to and from work to transport radio equipment using an assigned frequency of police or law enforcement officers or fire rescue personnel. The bill does not mandate that the radio be turned on while off duty and does not change the current standard of practice in the field.

C. SECTION DIRECTORY:

Section 1: Amends s. 843.16, F.S., to provide an exception that allows any sworn law enforcement officer or emergency rescue personnel to install or transport radio equipment using specified frequencies while using personal transportation to and from work.

Section 2: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There is no fiscal impact on state government revenue.

³ According to s.943.10, F.S., a "law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

⁴ According to s.496.404, F.S., "emergency service employee" means any employee who is a firefighter, as defined in s. 633.30, F.S., or ambulance driver, emergency medical technician, or paramedic, as defined in s. 401.23, F.S.

2. Expenditures:

There is no fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There is no fiscal impact on local government revenues.

2. Expenditures:

There is no fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is no direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There may be some confusion as to who this bill applies to as the term "sworn law enforcement officer" and "emergency rescue personal" may not be clear. The Florida Statutes contain 12 different definitions

of the term “law enforcement officer”⁵ and one definition of “emergency service employee”⁶ which is not the term used by the bill. The Florida Statutes do not define “Emergency Rescue Personnel.” It is recommended that the bill be amended to more clearly define the terms “sworn law enforcement officer” and “emergency rescue personnel”.

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On January 23, 2008, the Constitution and Civil Law Committee adopted an amendment to reference the terms “sworn law enforcement officer” as defined in s. 943.10, F.S., and “emergency service employee” as defined in s. 496.404, F.S., in order to clarify to whom the bill applies.

⁵ Florida statutes contains 12 different definitions of the term “law enforcement officer” and the cites include: ss. 705.101, F.S., 784.07, F.S., 741.28, F.S., 403.413, F.S., 112.531, F.S., 212.05, F.S., 496.404, F.S., 316.1906, F.S., 943.10, F.S., 790.001, F.S., 1006.66, F.S., and 110.07, F.S.

⁶ See s.496.404, F.S.