

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/CS/SB 1110

INTRODUCER: Criminal Justice Committee; Transportation Committee; and Senator Evers

SUBJECT: Railroad Police Officers

DATE: April 1, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.	Erickson	Cannon	CJ	Fav/CS
3.			ACJ	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 1110 provides that, until the Governor appoints or rejects the appointment of a special officer, a common carrier may temporarily employ a person as a special officer if the person complies with minimum qualifications for employment as a law enforcement officer. Notwithstanding any other provision of law, a special officer shall be required to have the same training and certification as a law enforcement officer in accordance with these minimum qualifications and specified continuing education and training. A Class I, Class II, or Class III railroad shall be considered an employing agency for purposes of these minimum qualifications and specified continuing education and training, and pay all costs associated with the certification and continuing education of employed special officers.

The bill adds “railroad special officer” (defined in the bill) to the list of officers and positions for which the felony or misdemeanor degree of any specified assault and battery offense is reclassified when committed upon a listed officer or person in a listed position.

Sections 943.085-943.255, F.S., deal with definitions of relevant terms in ch. 943, F.S., the Criminal Justice Standards and Training Commission (CJSTC), minimum qualifications for employment, officer certification, education and training, and other matters. The bill modifies

definitions of “law enforcement officer” and “employing agency” to specify that, for purposes of these statutes *only*, the definition of “law enforcement officer” includes special officers employed by a Class I or Class II railroad and appointed by the Governor and an “employing agency” includes a Class I or Class II railroad that employs special officers appointed by the Governor.

This bill amends the following sections of the Florida Statutes: 354.01; 784.07; and 943.10.

II. Present Situation:

Law Enforcement Officer Certification and Training

Section 943.10, F.S., provides the following definitions applicable to ch. 943, FS.:

- 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 also 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.¹
- An “employing agency” means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a non-juvenile detention facility.²

The Criminal Justice Standards and Training Commission (CJSTC) within the Florida Department of Law Enforcement (FDLE) establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers. Currently, the CJSTC certifies a person for employment as a law enforcement officer if:

- The person complies with s. 943.13(1)-(10), F.S.; and
- The employing agency complies with s. 943.133(2) and (3), F.S.³

Section 943.13, F.S., requires every person employed or appointed as a law enforcement officer to:

- Be at least 19 years of age;
- Be a citizen of the United States;

¹ Section 943.10(1), F.S.

² Section 943.10(4), F.S.

³ Section 943.1395(1), F.S. Section 943.133, F.S., sets forth the general responsibilities and requirements of employing agencies, and specifies that an employing agency is responsible for the collection, verification, and maintenance of documentation establishing that an applicant complies with the requirements of s. 943.13, F.S.

- Be a high school graduate or its “equivalent;”
- Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States;
- Have documentation of his or her processed fingerprints on file with the employing agency (an alternative is provided for private correctional officers);
- Pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the CJSTC;
- Have a good moral character as determined by a background investigation under procedures established by the CJSTC;
- Execute and submit to the employing agency an affidavit-of-applicant form, adopted by the CJSTC, attesting to his or her compliance with specified subsections of the statute.
- Complete a CJSTC-approved basic recruit training program for the applicable criminal justice discipline, unless exempt;
- Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline; and
- Comply with the continuing training or education requirements of s. 943.135, F.S.

The definition of the term “law enforcement officer” only includes those elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof. As such, persons employed by private entities (e.g., special officers appointed by the Governor pursuant to s. 354.01, F.S., including railroad police) cannot be certified by the CJSTC as “law enforcement officers.” Similarly, the definition of the term “employing agency” only includes agencies or units of government or any municipality or the state or any political subdivision thereof. It does not include private entities (e.g., Class I or Class I railroads that employ special officers pursuant to s. 354.01, F.S.)

Railroads and Special Officers

According to the U.S. Surface Transportation Board (STB),⁴ railroads are classified based on their annual operating revenues. The Class to which a railroad belongs is determined by comparing its adjusted operating revenues for three consecutive years to the following scale:

Class I - \$250 million or more;
 Class II - \$20 million or more;
 Class III - \$0 to \$20 million.⁵

Florida’s rail system is comprised of 2,786 miles of mainline track, which are primarily owned by 15 operating line-haul railroads and terminal or switching companies (81 miles are owned by

⁴ The STB was created in the ICC Termination Act of 1995 and is the successor agency to the Interstate Commerce Commission. The STB is an economic regulatory agency that Congress charged with resolving railroad rate and service disputes and reviewing proposed railroad mergers. The STB is decisionally independent, although it is administratively affiliated with the Department of Transportation. See <http://www.stb.dot.gov/stb/about/overview.html>.

⁵ The following formula is used to adjust a railroad's operating revenues to eliminate the effects of inflation: Current Year’s Revenues X (1991 Avg. Index /Current Year’s Avg. Index). The average index (deflator factor) is based on the annual average Railroad Freight Price Index for all commodities. *Frequently Asked Questions*, Surface Transportation Board, available at <http://www.stb.dot.gov/stb/faqs.html>.

the State).⁶ Florida's rail system includes two Class I railroads,⁷ one Class II railroad,⁸ eleven Class III railroads,⁹ and one railroad specializing in switching and terminals.¹⁰ The largest operator in Florida is CSX Transportation, which owns more than 53 percent of the statewide track mileage.¹¹

Section 354.01, F.S., authorizes the appointment of "special officers," who are persons employed by railroads and other common carriers for the protection of the carrier's employees, passengers, freight, equipment, and properties. Appointments of special officers are made by the Governor, and applicants are required to meet the law enforcement qualifications and training requirements of s. 943.13(1)-(10), F.S.¹² Special officer arrest powers are generally limited in that they can arrest persons, on or off the railroad's property, so long as the violation occurred on the property.¹³

Special officers are required to provide a \$5,000 surety bond to the Governor for the faithful performance of their duties, and may be removed by the Governor at any time.¹⁴ Special officers are paid by their employing carrier – not by the state or any county.¹⁵

While special officers are required to meet the minimum standards that apply to law enforcement officers, they are not certified law enforcement officers because they do not work for an "employing agency" as defined in s. 943.10(4), F.S. Railroads and common carriers that employ special officers are not considered employing agencies because they are not governmental entities.

Reclassification of Assault and Battery Offenses Committed Against Specified Persons

Section 784.07, F.S., reclassifies the misdemeanor or felony degree of assault and battery offenses committed upon the following types of employees or persons:

- A law enforcement officer;

⁶ *The Florida Rail System Plan: Investment Element* (December 2010), p. 2-1, available at <http://www.dot.state.fl.us/rail/PlanDevel/Documents/FinalInvestmentElement/A-2010FLRailPlan-InvestmentElement.pdf>.

⁷ *Id.* (CSX Transportation and Norfolk Southern Corporation).

⁸ *Id.* (Florida East Coast Railway).

⁹ *Id.* (Alabama and Gulf Coast Railway AN Railway, Bay Line Railroad, First Coast Railroad, Florida West Coast Railroad, Florida Central Railroad, Florida Midland Railroad, Florida Northern Railroad, Georgia and Florida Railway, Seminole Gulf Railway, and South Central Florida Express).

¹⁰ *Id.* (Talleyrand Terminal).

¹¹ *Id.*

¹² Section 354.01, F.S. The FDLE states that, currently, the Governor grants a commission to railroad police officers who have the arrest authority equivalent to that of a deputy sheriff. They are duly sworn officers on railroad property with full arrest powers and the authority to investigate crimes. According to the FDLE, the bill does not seek to expand the scope of their existing authority in any way. The FDLE further states that, while rail police currently meet or exceed all requirements for state certification as law enforcement officers, these police are not under the administrative oversight of the CJSTC. In addition, there are no continuing education and training requirements for these police. Analysis of SB 1110 (dated February 26, 2013), Florida Department of Law Enforcement (on file with the Committee on Criminal Justice). This analysis is further cited as "FDLE Analysis."

¹³ *Id.*

¹⁴ Sections 354.03 and 354.05, F.S.

¹⁵ Section 354.04, F.S.

- A firefighter;
- An emergency medical care provider;
- A traffic accident investigation officer;
- A nonsworn law enforcement agency employee certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI;
- A law enforcement explorer;
- A traffic infraction enforcement officer;
- A parking enforcement specialist;
- A person licensed as a security officer and wearing a uniform that bears at least one patch or emblem visible at all times that clearly identifies the employing agency and clearly identifies the person as a licensed security officer; and
- A security officer employed by the board of trustees of a community college.

Section 784.07, F.S., applies whenever any person is charged with knowingly committing an assault or battery upon one of these persons while that person is engaged in the lawful performance of his or her duties. The reclassification of degree of the offense depends on the assault or battery offense charged:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.
- In the case of battery, from a first degree misdemeanor to a third degree felony.
- In the case of aggravated assault, from a third degree felony to a second degree felony, and any person convicted of aggravated assault upon a law enforcement officer is subject to a mandatory three-year minimum term of imprisonment.
- In the case of aggravated battery, from a second degree felony to a first degree felony, and any person convicted of aggravated battery of a law enforcement officer is subject to a mandatory five-year minimum term of imprisonment.

Further, if the person, during the commission of a battery subject to reclassification as a third degree felony, possessed:

- A firearm or destructive device, as defined, the person is subject to a mandatory minimum term of imprisonment of three years.
- A semiautomatic firearm and its high-capacity detachable box magazine, as defined, or a machine gun, as defined, the person is subject to a mandatory minimum term of imprisonment of eight years.

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. The maximum sentence for:

- A second degree misdemeanor is 60 days in a county jail.
- A first degree misdemeanor, one year in a county jail.
- A third degree felony, 5 years in state prison.
- A second degree felony, 15 years in state prison.

- A first degree felony, generally 30 years in state prison.¹⁶

Fines may also be imposed, and these fines escalate based on the degree of the offense.¹⁷

The offense severity ranking level of applicable reclassified felony offenses is as follows:

- Reclassified battery: Level 4.
- Reclassified aggravated assault: Level 6.
- Reclassified aggravated battery: Level 7.¹⁸

Additionally, s. 784.07, F.S., provides that adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release, prior to serving the minimum sentence.

III. Effect of Proposed Changes:

Section 1 amends s. 354.01, F.S., to provide that, until the Governor appoints or rejects the appointment of a special officer, a common carrier may temporarily employ a person as a special officer if the person complies with the qualification for employment as a law enforcement officer in s. 943.13, F.S. (minimum qualifications for employment or appointment). Notwithstanding any other provision of law, a special officer shall be required to have the same training and certification as a law enforcement officer in accordance with s. 943.13, F.S., and s. 943.135(1), F.S. (continuing education and training). A Class I, Class II, or Class III railroad shall be considered an employing agency for purposes of s. 943.13, F.S., and s. 943.135(1), F.S., and shall pay all costs associated with the certification and continuing education of employed special officers.

Section 2 amends s. 784.07, F.S., to define “railroad special officer” to mean a person employed by a Class I, Class II, or Class III railroad and appointed or pending appointment by the Governor pursuant to s. 354.01, F.S. The bill adds railroad special officer to the list of officers and positions for which the misdemeanor or felony degree of any specified assault and battery offense is reclassified when committed upon a listed officer or person in a listed position.

Section 3 amends s. 943.10(1), F.S., to provide that, for purposes of ss. 943.085-943.255, F.S., *only*, the definition of “law enforcement officer” includes special officers employed by a Class I or Class II railroad and appointed by the Governor pursuant to s. 354.01, F.S. The bill also amends s. 943.10(4), F.S., to provide that, for purposes of ss. 943.085-943.255, F.S., *only*, the definition of “employing agency” also includes a Class I or Class II railroad that employs special officers pursuant to s. 354.01, F.S.¹⁹

¹⁶ Section 775.082, F.S.

¹⁷ Section 775.083, F.S.

¹⁸ Section 921.0022, F.S. Sentence points accrue based upon the ranking of a non-capital felony offense with higher-level offenses accruing more sentence points than lower-ranking offenses. These points, along with points accrued for additional and prior offenses and other factors, are entered into a statutorily-derived mathematical calculation to determine the lowest possible sentence.

¹⁹ Class III railroads are not referenced. See “Technical Deficiencies” section of this analysis.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides that a Class I, Class II, or Class III railroad that employs special officers incurs all costs associated with certification and continuing education of the employed special officers.

C. Government Sector Impact:

The FDLE stated that CS/SB 1110 would make railroad special officers eligible to receive monies from the Criminal Justice Standards and Training Trust Fund for advanced and specialized training that is delivered by Florida's forty criminal justice training centers. This would be a recurring cost of approximately \$1,800 per year (based on the current disbursement amount of \$67 per officer with an officer count of 27) beginning in FY 2013-14 and continuing every year thereafter. This cost may increase or decrease depending on the availability of funds for disbursement to the training centers.²⁰ It is unclear if this analysis is equally applicable to CS/CS SB 1110. An FDLE analysis of CS/CS/SB 1110 was not available at the time this analysis was completed.

VI. Technical Deficiencies:

CS/CS/SB 1110, in part, amends s. 354.01, F.S., to read: "Notwithstanding any other provision of law, a special officer shall be required to have the same training and certification as a law enforcement officer in accordance with s. 943.13 and s. 943.135(1) and a Class I, Class II, or Class III railroad shall be considered an employing agency for purposes of s. 943.13 and s. 943.135(1)...." While this language corrects an earlier omission of a reference to Class III railroads, the language does not pick up specific statutory references ("943.085-943.255") that

²⁰ *Id.*

are used in Section 3 of the bill, which amends the definitions of “law enforcement officer” and “employing agency” in s. 943.10, F.S.

Section 3 of the bill (unlike Sections 1 and 2 of the bill) does not reference Class III railroads in amendments to the definitions of “law enforcement officer” and employing agency.”

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Criminal Justice on April 1, 2013:

- Provides that, until the Governor appoints or rejects the appointment of a special officer, a common carrier may temporarily employ a person as a special officer if the person complies with the minimum qualifications for employment or appointment in s. 943.13, F.S.
- Provides that, notwithstanding any other provision of law, a special officer shall be required to have the same training and certification as a law enforcement officer in accordance with s. 943.13, F.S., and s. 943.135(1), F.S. (continuing education and training).
- Revises the definition of “railroad special officer” in s. 784.07, F.S. (reclassification of assault and battery offenses on specified officers and persons in specified positions) to mean a person employed by a Class I, Class II, or Class III railroad and appointed or pending appointment by the Governor pursuant to s. 354.01, F.S. (appointment of special officers).
- Reclassifies the misdemeanor or felony degree of specified assault and battery offenses committed upon “railroad special officers” (as defined).

CS by Transportation on March 14, 2013:

The CS requires a Class I or Class II railroad that employs special officers, as a non-public employing entity, to incur all costs associated with certification and continuing education of the employed special officers, thereby removing a conflict with existing law that prohibits such officers from receiving any fees from the state.

B. Amendments:

None.