

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 489 Railroad Police Officers  
**SPONSOR(S):** Criminal Justice Subcommittee; Stone and others  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Criminal Justice Standards and Training Commission (CJSTC) establishes uniform minimum standards for the employment and training of law enforcement officers (LEOs). Currently, CJSTC certifies a person for employment as an LEO 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.

Section 943.10, F.S., defines the term “law enforcement officer” to include only those elected, appointed, or employed full time *by any municipality, the state, or any political subdivision of the state*. Similarly, the definition of the term “employing agency” only includes *agencies or units of government, municipalities, the state, or any political subdivision of the state* that has the authority to employ officers.

Section 354.01, F.S., authorizes the Governor to appoint “special officers,” which are persons employed by railroads for the protection of the railroad’s employees, passengers, freight, equipment, and properties. Special officers are required to meet the law enforcement qualifications and training requirements of s. 943.13(1)-(10), F.S., but they are not certified law enforcement officers because they do not work for an “employing agency.” Railroads and common carriers that employ special officers are not considered employing agencies because they are not governmental entities.

The bill amends the definition of “law enforcement officer” in s. 943.10, F.S., to include special officers employed by a Class I or Class II railroad and appointed by the Governor pursuant to s. 354.01, F.S. The definition of “employing agency” is amended to include a Class I or Class II railroad that employs special officers. As a result, special officers will be eligible for certification as law enforcement officers by CJSTC.

The bill also amends s. 784.07, F.S., which reclassifies assault and battery offenses committed against specified officers, to include railroad special officers employed by a Class I or Class II railroad and appointed by the Governor.

The Criminal Justice Impact Conference met February 27, 2013 and determined the bill may have an insignificant negative impact on state prison beds.

The bill provides that the railroad employing such officers will incur all costs of certification and continuing education and will therefore not have a fiscal impact on FDLE.

The bill is effective July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Law Enforcement Officer Certification**

Section 943.10, F.S., provides the following definitions:

- 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.
- 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.

The Criminal Justice Standards and Training Commission (CJSTC), housed 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 (LEOs). Currently, CJSTC certifies a person for employment as an LEO 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.<sup>1,2</sup>

Section 943.13, F.S., requires every person employed or appointed as an LEO to:

- (1) Be at least 19 years of age;
- (2) Be a citizen of the United States;
- (3) Be a high school graduate or its “equivalent;”
- (4) 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;
- (5) Have documentation of his or her processed fingerprints on file with the employing agency or;
- (6) Pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by CJSTC;
- (7) Have a good moral character as determined by a background investigation under procedures established by CJSTC;
- (8) Execute and submit to the employing agency an affidavit-of-applicant form, adopted by CJSTC, attesting to his or her compliance with subsections (1)-(7);
- (9) Complete a CJSTC-approved basic recruit training program for the applicable criminal justice discipline, unless exempt;
- (10) Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline; and
- (11) 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 cannot be certified by CJSTC as “law enforcement officers.” Similarly, the

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<sup>1</sup> 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.

<sup>2</sup> Section 943.1395(1), F.S.

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.

### **Railroads and Special Officers**

According to the U.S. Surface Transportation Board (STB),<sup>3</sup> 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.<sup>4</sup>

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 the State).<sup>5</sup> Florida’s rail system includes two Class I railroads,<sup>6</sup> one Class II railroad,<sup>7</sup> eleven Class III railroads,<sup>8</sup> and one railroad specializing in switching and terminals<sup>9, 10</sup>

Section 354.01, F.S., authorizes the appointment of “special officers,” which 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.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> Special officers are paid by their employing carrier – not by the state or any county.<sup>14</sup>

While special officers are required to meet the minimum standards that apply to LEOs, they are not certified law enforcement officers because they do not work for an “employing agency.” Railroads and common carriers that employ special officers are not considered employing agencies because they are not governmental entities.

### **Assault and Battery Against Specified Officers**

Section 784.07, F.S., reclassifies assault<sup>15</sup> and battery<sup>16</sup> offenses that are knowingly committed against the following persons while such persons are engaged in the lawful performance of their duties:

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<sup>3</sup> 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, <http://www.stb.dot.gov/stb/about/overview.html> (last visited on February 14, 2013).

<sup>4</sup> 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, <http://www.stb.dot.gov/stb/faqs.html> (last visited on February 14, 2013).

<sup>5</sup> *The Florida Rail System Plan: Investment Element*, December 2010, <http://www.dot.state.fl.us/rail/PlanDevel/Documents/FinalInvestmentElement/A-2010FLRailPlan-InvestmentElement.pdf> (last visited on February 14, 2013).

<sup>6</sup> CSX Transportation and Norfolk Southern Corporation.

<sup>7</sup> Florida East Coast Railway.

<sup>8</sup> 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.

<sup>9</sup> Talleyrand Terminal.

<sup>10</sup> *Supra* note 5.

<sup>11</sup> Section 354.01, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Sections 354.03 and 354.05, F.S.

<sup>14</sup> Section 354.04, F.S.

- Law enforcement officers;<sup>17</sup>
- Firefighters;<sup>18</sup>
- Emergency medical care providers;<sup>19</sup>
- Traffic accident investigation officers;
- Non-sworn law enforcement agency employees who are certified as an agency inspector;
- Blood alcohol analysts or breath test operators while such employees are uniformed and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI;
- Law enforcement explorers;<sup>20</sup>
- Traffic infraction enforcement officers;
- Parking enforcement specialists; and
- Licensed security officers or security officers employed by the board of trustees of a community college.

The statute reclassifies the assault and battery offenses as follows:

- 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;<sup>21</sup> and
- In the case of aggravated battery, from a second degree felony to a first degree felony.<sup>22</sup>

### **Effect of the Bill**

The bill amends the definition of “law enforcement officer” in s. 943.10, F.S., to specify that for purposes of ss. 943.085-943.255, F.S., only, the definition includes special officers employed by a Class I or Class II railroad and appointed by the Governor pursuant to s. 354.01, F.S. Sections 943.085-943.255, F.S., relate to the training, certification, and discipline of law enforcement, correctional, and correctional probation officers. The bill also amends the definition of “employing agency” to specify that for purposes of ss. 943.085-943.255, F.S., only, the definition includes a Class I or Class II railroad that employs special officers pursuant to s. 354.01, F.S. As a result, special officers will be eligible for certification as LEOs by CJSTC.

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<sup>15</sup> Section 784.011, F.S., defines “assault” as an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

<sup>16</sup> Section 784.03, F.S., states that battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person.

<sup>17</sup> Section 784.07(1)(d), F.S., defines the term “law enforcement officer” as a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, F.S., and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Parole Commission; a federal law enforcement officer as defined in s. 901.1505, F.S.; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or FDLE.

<sup>18</sup> Section 784.07(1)(b), F.S., defines the term “firefighter” as any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires.

<sup>19</sup> Section 784.07(1)(a), F.S., defines the term “emergency medical care provider” as an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, F.S., medical director as defined in s. 401.23, F.S., or any person authorized by an emergency medical service licensed under chapter 401 who is engaged in the performance of his or her duties. The term also includes physicians, employees, agents, or volunteers of hospitals as defined in ch. 395, F.S., who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital’s emergency department or the security thereof.

<sup>20</sup> Section 784.07(1)(c), F.S., defines the term “law enforcement explorer” as any person who is a current member of a law enforcement agency’s explorer program and who is performing functions other than those required to be performed by sworn law enforcement officers on behalf of a law enforcement agency while under the direct physical supervision of a sworn officer of that agency and wearing a uniform that bears at least one patch that clearly identifies the law enforcement agency that he or she represents.

<sup>21</sup> Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer must be sentenced to a minimum term of imprisonment of 3 years. Section 784.07(2)(c), F.S.

<sup>22</sup> Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years. Section 784.07(2)(d), F.S.

The bill amends s. 354.01, F.S., to specify that:

- Special officers shall not be considered a “law enforcement officer” except for purposes of ss. 943.085-943.255, F.S.;
- A Class I or II railroad shall not be considered an “employing agency” except for purposes of ss. 943.085-943.255, F.S.; and
- A Class I or II railroad that employs special officers must incur all costs associated with certification and continuing education of the special officers.

The bill also requires special officers to meet the minimum standards contained in s. 943.13(1)-(11), F.S. (currently special officers only have to meet the requirements of (1)-(10)). Subsection (11) requires a person to comply with the continuing training or education requirements of s. 943.135, F.S.

The bill amends s. 784.07, F.S., to reclassify assault and battery offenses committed against railroad special officers. A “railroad special officer” is defined in s. 784.07, F.S., as a person employed by a Class I or Class II railroad and appointed by the Governor pursuant to s. 354.01, F.S.

## B. SECTION DIRECTORY:

Section 1. Amends s. 354.01, F.S., relating to appointment of special officers.

Section 2. Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

Section 3. Amends s. 943.10, F.S., relating to definitions; ss. 943.085-943.255.

Section 4. Provides an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill provides a Class I or II railroad that employs special officers must incur all costs associated with certification and continuing education of the special officers and will therefore not have a fiscal impact on FDLE.

The Criminal Justice Impact Conference met February 27, 2013 and determined the bill may have an insignificant negative impact on state prison beds.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill amends s. 784.07, F.S., to reclassify assault and battery offenses committed against railroad special officers employed by a Class I or Class II railroad and appointed by the Governor. In cases of assault, this would result in a second degree misdemeanor being reclassified as a first degree misdemeanor. This could have a negative jail bed impact. However, in cases of battery,

the offense is reclassified from a first degree misdemeanor to a third degree felony. This could have a positive jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill makes Class I and II railroads “employing agencies” for purposes of ss. 943.085-943.255, F.S., and requires all railroad special officers (regardless of what Class of railroad they work for) to meet *all* of the minimum standards contained in s. 943.13, F.S. Railroad special officers who are employed by Class I or II railroads will also be required to be certified by CJSTC.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 943.12, F.S., authorizes CJSTC to “adopt rules for the administration of ss. 943.085-943.255 pursuant to chapter 120.” To the extent this bill requires CJSTC to amend its existing rules, there does not appear to be a need for additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unknown whether Florida’s Class III railroads currently have special officers. If so, it is unclear why only Class I and II special officers are added to the definition of LEO, since they would all have to meet the minimum requirements in s. 943.13, F.S.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 12, 2013, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment:

- Clarified that special officers and Class I and II railroads were included in the definitions of “law enforcement officer” and “employing agency” for purposes of ss. 943.085-943.255, F.S., only; and
- Amended s. 784.07, F.S., to reclassify assault and battery offenses committed against railroad special officers.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

On March 13, 2013, the Justice Appropriations Subcommittee adopted one amendment that requires a Class I or II railroad that employs special officers to incur all costs associated with certification and continuing education of the special officers.

This analysis is drafted to the amendment as passed by the Justice Appropriations Subcommittee.