

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: SB 968

INTRODUCER: Senator Hays

SUBJECT: School Safety

DATE: March 4, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.			ED	
3.			AED	
4.			AP	

I. Summary:

SB 968 authorizes school principals and district school superintendents to designate employees to carry concealed firearms on school campuses or in district administrative buildings.

The bill requires that designees meet criteria set forth in the bill including having either a military or law enforcement background or a valid concealed carry license, successful completion of a training program, and additional screening as required by the principal or superintendent.

The Florida Department of Law Enforcement will design and administer the training as set forth in the bill.

Local law enforcement school campus first responders will have the opportunity to recommend safety and security-related changes to new school construction plans. The recommendations must be incorporated into the plans prior to the construction bid process.

There is legislative intent regarding school safety in the bill. Conforming and technical amendments are made throughout the bill

The bill will become effective July 1, 2014.

II. Present Situation:

Gun Free School Zones

Federal Law

Federal law prohibits the knowing possession of a firearm that has been transported across state lines in interstate commerce or that otherwise affects interstate or foreign commerce in a school zone. The prohibition does not apply to possession of a firearm:

- On private property not part of school grounds;
- By individuals licensed to possess a firearm by the state or a political subdivision of the state in which the school zone is located if the licensing law requires law enforcement verification that the individual meets the law's qualifications to receive the license before issuance;
- That is not loaded and stored in a locked container in a motor vehicle;
- Authorized pursuant to a program approved by the school in the school zone;
- Pursuant to a contract entered into between a school and the individual or an employer of the individual;
- By a law enforcement officer acting in his or her official capacity; or
- That is unloaded and is possessed by an individual who is authorized by the school to cross school grounds for the purpose of gaining access to public or private lands open to hunting.¹

Federal law also prohibits the knowing or reckless discharge or attempted discharge of a firearm that has been transported across state lines in interstate commerce or that otherwise affects interstate or foreign commerce in a school zone. The prohibition does not apply to the discharge of a firearm:

- On private property not part of school grounds;
- Authorized pursuant to a program approved by the school in the school zone;
- Pursuant to a contract entered into between a school and the individual or an employer of the individual; or
- By a law enforcement officer acting in his or her official capacity.²

Federal law further provides that it is not Congress' intent to occupy the field of firearms regulation, unless there is a direct, positive, and irreconcilable conflict between a federal and state firearms law regulating the same subject matter. Thus, states may regulate firearms in a manner that is consistent with federal law.³

Florida Law

Florida law prohibits, with exceptions, the possession or discharge of weapons or firearms at a preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.⁴ The law prohibits:

¹ 18 U.S.C. s. 922(q)(2)(A)-(B).

² 18 U.S.C. s. 922(q)(3)(A)-(B).

³ 18 U.S.C. s. 927.

⁴ s. 790.115(2)(a), F.S. (flush left provision at end of paragraph).

- Exhibition of a weapon⁵ or firearm in the presence of another in a rude, careless, angry, or threatening manner on school property or a school bus, at a school bus stop or school-sponsored event, or within 1,000 feet⁶ of a K-12 public or private school, during school hours or at the time of a school activity.⁷ Such exhibition is a third degree felony,⁸ unless it is made in lawful self-defense.⁹
- Possession of a weapon¹⁰ or firearm, “except as authorized in support of school-sanctioned activities, at a school-sponsored event or on the property of any school, school bus, or school bus stop.” Penalties for such possession vary, as follows:
 - A person who willfully and knowingly unlawfully possesses a firearm on school property or a school bus or at a school bus stop or school-sponsored activity or event commits a third degree felony.¹¹
 - A person who fails to securely store a firearm, enabling a minor to access it who then unlawfully possesses it on school property or a school bus or at a school bus stop or school-sponsored activity or event, commits a second degree misdemeanor.¹²
 - A person who discharges a firearm while unlawfully possessing it on school property or a school bus or at a school bus stop or school-sponsored activity or event, commits a second degree felony,¹³ unless discharged for lawful defense of self or others or for a lawful purpose.¹⁴

The law provides several exceptions allowing individuals to carry a firearm on school property or a school bus or at a school bus stop or school-sponsored activity or event without express approval by school officials. A firearm may be carried:

- To a school-approved firearms program;
- To a career center having a firearms training range; or
- In a vehicle by a person who is at least 18 years of age and the firearm is securely encased or not readily accessible for immediate use.

⁵ “Weapon” means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife. s. 790.001(13), F.S. Exhibiting a sword, sword cane, electric weapon or device, destructive device, razor blade, box cutter, or common pocketknife is also prohibited. s. 790.115(1), F.S.

⁶ The prohibition on exhibition of a firearm or weapon on private real property within 1,000 feet of a school does not apply to the property owner or those whose presence is authorized by the owner. s. 790.115(1), F.S.

⁷ s. 790.115(1), F.S.

⁸ A third degree felony is punishable by term of imprisonment not exceeding five years and a fine not exceeding \$5,000. ss. 775.082(3)(d) and 775.083(1)(c), F.S.

⁹ s. 790.115(1), F.S.

¹⁰ In addition to firearms and items defined as weapons, this provision also applies to possession of an electric weapon or device, destructive device, and a razor blade or box cutter. Section 790.115(2)(a), F.S.; *see footnote text, supra* note 4.

¹¹ s. 790.115(2)(e), F.S.

¹² s. 790.115(2)(c), F.S. This does not apply if the firearm was securely stored and the minor obtains the firearm as a result of an unlawful entry by any person. Also exempt from this section are members of the Armed Forces, National Guard, State Militia, or law enforcement officers, if the minor gains possession during or incidental to the performance of their official duties.

¹³ A second degree felony is punishable by a term of imprisonment not exceeding 15 years and a fine not exceeding \$10,000. ss. 775.082 and 775.083, F.S.

¹⁴ s. 790.115(2)(d), F.S.

School districts may adopt policies waiving the vehicle exception for purposes of student and campus parking privileges.¹⁵

Concealed Weapon and Firearm Permits

Florida law authorizes the Department of Agriculture and Consumer Services (DACCS) to issue a concealed weapons and firearm license to individuals who meet statutory qualifications. Among other criteria, applicants must pass a fingerprint-based criminal background check and complete a firearm proficiency training class. The concealed carry license is a photo identification that enables the holder to carry a concealed weapon or firearm in public, except for specified locations, e.g., school or college athletic events; elementary, secondary, and postsecondary schools; and career centers.¹⁶

The Florida Department of Law Enforcement (FDLE) Criminal Justice Standards and Training Commission certifies law enforcement officers and correctional probation officers after training curriculum has been successfully completed and other conditions are met.¹⁷ Officers who hold an active certification are not required to possess a concealed carry license in order to carry a concealed weapon or firearm while they are off-duty.¹⁸

Retired Law Enforcement, Active and Discharged Military

With a passing score on the firing range testing component of the minimum firearms proficiency course for active law enforcement officers, a retired law enforcement officer is authorized under federal law to carry a concealed firearm with proper state identification.¹⁹

Military firearms training is recognized as evidence of competence with a firearm for purposes of the concealed carry license but all other requirements must be met for both active and retired military.²⁰ A person applying for a concealed carry license may show proficiency with a firearm by presenting evidence of experience with a firearm during military service.²¹

Safe Storage

Florida law requires persons to store loaded firearms securely to prevent minors from gaining access to them.²²

¹⁵ s. 790.115(2)(c), F.S.; *see, e.g.*, Policy 7217, Leon County School Board.

¹⁶ s. 790.06, F.S.

¹⁷ s. 943.13, F.S., and related provisions within chapter 943, F.S. The curriculum includes “high liability training” which requires the recruit to demonstrate safety and marksmanship with a firearm.

¹⁸ s. 790.052, F.S., applies to officers defined in ss. 943.10(1), (2), (6), (7), (8) and (9), F.S.

¹⁹ Generally, retired in good standing after at least 15 years of service. s. 943.132, F.S.

²⁰ The 21 years of age requirement has been waived for active and honorably discharged veteran military. ss. 790.06(2)(b) and 790.062, F.S.

²¹ s. 790.06(2)(h)5., F.S.

²² ss. 790.115(2)(c)2. and 790.174, F.S.

School Safety

Emergency Policies

Florida law requires each district school board to formulate policies and procedures for emergency response drills and actual emergencies. These policies must include procedures for responding to various emergencies, such as fires, natural disasters, and bomb threats. Commonly used alarm system responses for specific types of emergencies must be incorporated into such policies.²³

The *Safety and Security Best Practices* (Best Practices) is a self-assessment tool that each school district must use to annually assess the effectiveness of district emergency response policies. Among other “best practices,” the self-assessment suggests that school districts:

- Develop a district-wide plan for potential attacks against school sites.
- Develop a checklist with step-by-step emergency procedures for use in every classroom which includes, among other things, procedures for weapons and hostage situations.
- Share emergency plans and procedures with designated school and school district personnel, identify training for all types of school staff and staff that require specialized training, and incorporate such training into the Master Plan for In-Service Training.²⁴

Each district school superintendent must make recommendations to the school board for improving emergency response policies based upon the self-assessment results. The self-assessment results and superintendent’s recommendations must be addressed in a publicly noticed school board meeting. The results of the self-assessment and any school board action on the superintendent’s recommendations must be reported to the Commissioner of Education within 30 days after the school board meeting.²⁵

School Resource Officers

School resource officers are employed by a law enforcement agency. They are certified law enforcement officers who retain all the powers and duties of a law enforcement officer during their tenure as a school resource officer.²⁶

School Safety Officers

School safety officers are certified law enforcement officers, who are employed by either a law enforcement agency or a district school board. A school safety officer has the authority to carry weapons when performing official duties.²⁷ School boards are authorized, but not required, to

²³ s. 1006.07(4)(a), F.S. Additionally, district school boards must establish model emergency management and preparedness procedures for weapon-use and hostage situations; hazardous materials or toxic chemical spills; weather emergencies, including hurricanes, tornadoes, and severe storms; and exposure resulting from manmade emergencies. s. 1006.07(4)(b), F.S.

²⁴ s. 1006.07(6), F.S.; Florida Department of Education, *District Safety and Security Best Practices*, <http://www.fldoe.org/EM/security-practices.asp> (last visited March 12, 2013). The self-assessment is developed by the Office of Program Policy Analysis and Government Accountability. *Id.*

²⁵ s. 1006.07(6), F.S.

²⁶ s. 1006.12(1)(a), F.S.

²⁷ ss. 1006.12(2)(a) and (c), F.S.

commission and assign to schools school safety officers for the protection of school personnel, property, and students within the school district. School boards may enter into mutual aid agreements with one or more law enforcement agencies. A school safety officer's salary may be paid jointly by the school board and the law enforcement agency, if mutually agreed to.²⁸

Background Screening

Florida law requires school district employees to undergo a fingerprint-based background screening as a condition of employment.²⁹ Instructional and noninstructional personnel³⁰ and noninstructional school district employees and contracted personnel³¹ must undergo Level 2 background screening.³² Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 51 criminal offenses.³³ Such employees must be rescreened every five years.³⁴

III. Effect of Proposed Changes:

School Campus and District Administration Building Safety

The bill provides the opportunity for school principals and superintendents to designate school or district employees to carry a concealed weapon or firearm on school or district property. The designated employee must complete at least 40 hours of a school safety program, and complete 8 hours of active shooter training and 4 hours of firearm proficiency training on an annual basis. The bill provides that FDLE will define and administer the training programs.

To become a designee, the employee must be:

- An honorably discharged military veteran with no firearm-related disciplinary infraction;
- An active-duty member of the military, National Guard, or reserves, with no firearm-related disciplinary infraction;
- A law enforcement officer or former officer with no firearm-related disciplinary infraction; or
- He or she must have a valid concealed weapon or firearm license.

Under current law the employee would have already undergone Level 2 background screening if he or she has contact with students. The bill provides that the designee will satisfy any additional screening requirements set forth by the principal or superintendent. The designee is required to

²⁸ ss. 1006.12(2)(b) and (d), F.S.

²⁹ ss. 1012.32, 1012.465, and 1012.467, F.S. Private schools participating in educational choice scholarship programs must also submit fingerprints of employees and contracted personnel with direct student contact to FDLE. See ss. 943.0542 and 1002.421(2)(i), F.S.

³⁰ Instructional and noninstructional personnel are individuals who are hired or contracted to fill positions that require direct contact with students in any public school. s. 1012.32(2), F.S.

³¹ Noninstructional school district employees and contracted personnel are individuals who are permitted access to school grounds when students are present; who have direct contact with students; or who have access to, or control of, school funds. s. 1012.465(1), F.S.

³² ss. 1012.32(1)-(2), 1012.465(2), and 1012.56(10), F.S.

³³ ss. 435.04, 1012.32(2), 1012.465(1), and 1012.56(10), F.S.

³⁴ ss. 1012.465(2) and 1012.56(10)(b), F.S.

carry the weapon or firearm in a concealed manner at all times while performing official school duties.

The bill requires that active-shooter and hostage situations be part of school board policies and procedures related to school safety. The law enforcement agency that is the first responder for the school campus is required by the bill to conduct active-shooter situation training for that particular school. The term “active shooter” is not defined in the bill. The school active-shooter situation training requirements are not specified.

Safety Planning

The bill requires the school superintendent to share recommendations that result from the self-assessment of safety and security practices with the law enforcement campus first responders.

Prior to beginning any new school construction bid process, the school board is required to supply the law enforcement first responder with construction plans for review and comment. The school board must incorporate any recommended changes into the plans before a construction bid is awarded.

The bill contains legislative intent language regarding school safety. It also makes technical and conforming changes in existing law. The bill will become effective July 1, 2014.

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:

None.

C. Government Sector Impact:

District school boards will likely experience additional costs related to safety and security due to designated employee training and perhaps liability costs associated with designees carrying firearms on school property.

FDLE anticipates a fiscal impact from the bill, reporting as follows:

“This bill designates FDLE develop and administer to civilians a school safety program, annual active shooter training, and firearms proficiency training. It is estimated that the development of the training as prescribed would cost a minimum of \$200,000. This is based on current estimates for curriculum development workshops and curriculum drafting by FDLE staff for courses that are 40 hours in length.

Because FDLE does not have the staff or structure in place to provide hands-on training to civilians or officers across the state, it would have to contract with a vendor or vendors to provide these services in metropolitan and rural areas. The estimated cost to administer this training is approximately \$2,028,000 for all three courses the first year, and \$624,000 annually for the active shooter and firearms proficiency training courses. These figures are based on an estimate of a possible number of students, average class size and the number of classes needed. This is based on an average of \$5,000 - \$6,000 for a week long course delivery and the associated materials to facilitate training.

ATMS II is the central repository of all criminal justice officer training, employment, and certification information, which is over 16 years old. This system is rather antiquated, but is the only one available to correspond to the need to track the training of authorized school safety designees to ensure compliance with the provisions of this legislation. The vast majority of the information contained within ATMS II is not confidential in nature. This will make information regarding authorization to carry a concealed weapon on school property available to the public under Florida’s public record laws.

The exact fiscal impact for the inclusion of training information for authorized designees is unknown. However, for comparison, a recent analysis of the system to include the training and certification information for fewer than 500 certified canine teams was estimated to be \$81,033. This figure was only programming costs and did not include resource/staffing cost.”³⁵

VI. Technical Deficiencies:

Section 1006.12(2), F.S., specifies that school safety officers have the authority to carry “weapons” in schools. There is no cross-reference to any definition of “weapon” in s. 1006.12(2) F.S. The ch. 790, F.S., definition of weapon specifically *excludes* a “firearm.”³⁶ Although a school safety officer is by definition a certified law enforcement officer who is therefore exempt

³⁵ Agency Bill Analysis, March 5, 2014.

³⁶ “Weapon” means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon *except a firearm* or a common pocketknife, plastic knife, or blunt-bladed table knife. s. 790.001(13), F.S. (emphasis added).

from the prohibition against possessing a firearm on school property under s. 790.115(3), F.S., inserting the words “firearm or” before the word “weapon” in s. 1006.12(2)(c), F.S., would eliminate unnecessary confusion.

VII. Related Issues:

The course development and designee training responsibility assigned to FDLE by the bill may require statutory expansion of the Department’s scope of authority. It is also likely that FDLE will need rulemaking authority corresponding to the expectations of the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.115, 1006.07, 1006.12, 435.04, 790.251, 921.0022, and 1012.315.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.