

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 753 School Safety
SPONSOR(S): Steube
TIED BILLS: **IDEN./SIM. BILLS:** SB 968

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee		Brink	Ahearn
2) Higher Education & Workforce Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill allows district school superintendents and school principals to create a school safety designee program through which the school principal, or, for an administration building, the district superintendent, may designate one or more individuals to carry a concealed weapon or firearm on school property. Weapons or firearms may only be carried in a concealed manner and must be on the individual's person at all times while performing official school duties. The bill does not require designees to possess a concealed weapon license.

For purposes of the prohibition on possessing or discharging weapons or firearms at a school, the bill amends the definition of "school" to exclude career centers and postsecondary institutions. Accordingly, the prohibition would no longer apply to career centers and postsecondary schools under s. 790.115, F.S. (Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited; penalties; exceptions).

The bill establishes criteria and training requirements which designees must meet.

The bill requires district school board policies and procedures for emergencies and emergency drills to include active shooter and hostage situations. Active shooter situation training for each school must be conducted by the designated first responding law enforcement agency or agencies for the school's campus.

The bill requires each district school superintendent to provide recommendations to improve school safety and security to the first responding local law enforcement agencies.

The bill creates provisions relating to law enforcement agency review of construction plans for new schools. Any recommendations made by the law enforcement agency must be incorporated into the plans before construction bidding may begin.

The bill specifies that a district school board may commission one or more school safety officers on each school campus.

The bill does not appear to have a fiscal impact on the state or local governments.

See III.C., Drafting Issues or Other Comments, which identifies concerns. Representative Stuebe will be filing an amendment addressing the identified concerns.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Gun Free School Zones

Federal Law

Federal law prohibits an individual from possessing a firearm at a place the person knows, or has reasonable cause to believe, is a school zone.¹ 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 unloaded and stored in a locked container on a motor vehicle;
- Authorized pursuant to a program approved by the school in the school zone;
- By an individual pursuant to a contract 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.²

Federal law also prohibits the knowing or reckless discharge or attempted discharge of a firearm by a person at a place that the person knows is a school zone.³ 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.⁴

Federal law further provides that it is not Congress's 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.⁵

Florida Law

¹ 18 U.S.C. s. 922(q)(2)(A). An element of the offense is that the person knowingly possess a firearm that has moved in or that otherwise affects interstate or foreign commerce.

² 18 U.S.C. s. 922(q)(2)(B).

³ 18 U.S.C. s. 922(q)(3)(A). An element of the offense is that the firearm have been moved in or otherwise affect interstate or foreign commerce.

⁴ 18 U.S.C. s. 922(q)(3)(B).

⁵ 18 U.S.C. s. 927.

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.⁶ The law prohibits:

- Exhibition of a weapon⁷ 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 feet⁸ of a K-12 public or private school, during school hours or at the time of a school activity.⁹ Such exhibition is a third degree felony,¹⁰ unless it is made in lawful self-defense.¹¹
- Possession of a weapon¹² 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 possesses a firearm unlawfully on school property or a school bus or at a school bus stop or school-sponsored activity or event commits a third degree felony.¹³
 - 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.¹⁴
 - 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,¹⁵ unless discharged for lawful defense of self or others or for a lawful purpose.¹⁶

The penalties for unlawful exhibition or possession of a firearm or weapon differ for licensed concealed weapons permit holders. Violations by such individuals constitute a second degree misdemeanor.¹⁷

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:

- In a case to a school-approved firearms program;
- In a case 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.¹⁸

⁶ Section 790.115(2)(a), F.S. (flush left provision at end of paragraph).

⁷ “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. Section 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. Section 790.115(1), F.S.

⁸ 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. Section 790.115(1), F.S.

⁹ Section 790.115(1), F.S.

¹⁰ A third degree felony is punishable by term of imprisonment not exceeding five years and a fine not exceeding \$5,000. Sections 775.082(3)(d) and 775.083(1)(c), F.S.

¹¹ Section 790.115(1), F.S.

¹² 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 supra* text accompanying note 4.

¹³ Section 790.115(2)(e), F.S.

¹⁴ Section 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 or to members of the Armed Forces, National Guard, State Militia, or law enforcement officers, with respect to firearm possession by a minor which occurs during or incidental to the performance of their official duties.

¹⁵ A second degree felony is punishable by a term of imprisonment not exceeding 15 years and a fine not exceeding \$10,000.

¹⁶ Section 790.115(2)(d), F.S.

¹⁷ Sections 790.115(2)(e) and 790.06(12)(a) and (d), F.S. A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not exceeding \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

¹⁸ Section 790.115(2)(a), F.S.

School districts may adopt policies waiving the vehicle exception for purposes of student and campus parking privileges.¹⁹

Concealed Weapons Permits

Florida law authorizes the Department of Agriculture and Consumer Services (DACS) to issue a concealed weapons permit (CWP) to individuals who meet statutory qualifications. Among other criteria, CWP applicants must pass a fingerprint-based criminal background check and complete a CWP training class. The CWP 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.²⁰

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.²¹

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; and
- 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.²²

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.²³

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 firearms or other weapons when performing official duties.²⁴ School boards are authorized, but not required, to 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

¹⁹ Section 790.115(2)(c), F.S.; *see, e.g.*, Policies 1217, 3217, 4217, 5772, and 7217, Leon County School Board.

²⁰ Section 790.06, F.S.

²¹ Section 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. Section 1006.07(4)(b), F.S.

²² Section 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 Feb. 28, 2014). The self-assessment is developed by the Office of Program Policy Analysis and Government Accountability. *Id.*

²³ Section 1006.07(6), F.S.

²⁴ Section 1006.12(2)(a) and (c), F.S.

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.²⁵

Background Screening

Florida law requires school district employees to undergo a fingerprint-based background screening as a condition of employment.²⁶ Instructional and noninstructional personnel²⁷ and noninstructional school district employees and contracted personnel²⁸ must undergo Level 2 background screening.²⁹ Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 51 criminal offenses.³⁰ Such employees must be rescreened every five years.³¹

Available Firearms and Security Training

Individuals seeking a Class "D" license as a private security officer must complete at least 40 hours of professional training by a provider licensed by DACS.³² The training addresses legal liability issues and court procedures; personal security; traffic and crowd control; fire detection and life safety; crime and accident prevention; terrorism awareness; first aid; emergency response procedures; ethics; and patrol, communication, observation, report writing, and interviewing techniques.³³

Individuals holding a Class "G" statewide firearm license must annually complete four hours of firearms recertification training taught by a licensed firearms instructor as a condition of license renewal.³⁴ Such training includes a review of legal aspects of firearms use and when to use a gun, operational firearms safety and mechanical training, and range-based firearms requalification.³⁵ In lieu of proof of statewide firearms recertification training, such individuals may submit:

- Proof of current certification as a law enforcement officer or correctional officer and completion of law enforcement firearms requalification training annually during the previous two years of the licensure period;
- Proof of current certification as a federal law enforcement officer and receipt of law enforcement firearms training administered by a federal law enforcement agency annually during the previous two years of the licensure period; or
- A Florida Criminal Justice Standards and Training Commission Instructor Certificate, National Rifle Association Private Security Firearm Instructor Certificate, or a firearms instructor certificate issued by a federal law enforcement agency and proof of having completed requalification training during the previous two years of the licensure period.³⁶

Effect of Proposed Changes

The bill allows district school superintendents and school principals to create a school safety designee program. Under the program, each public or private school principal, or, for an administration building,

²⁵ Section 1006.12(2)(b) and (d), F.S.

²⁶ Sections 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.*

²⁷ Instructional and noninstructional personnel are individuals who are hired or contracted to fill positions that require direct contact with students in any public school. Section 1012.32(2), F.S.

²⁸ 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. Section 1012.465(1), F.S.

²⁹ Sections 1012.32(1)-(2), 1012.465(2), and 1012.56(10), F.S.

³⁰ *See ss. 435.04, 1012.32(2), 1012.465(1), and 1012.56(10), F.S.*

³¹ Sections 1012.465(2) and 1012.56(10)(b), F.S.

³² Section 493.6303(4)(a), F.S.

³³ Florida Department of Agriculture and Consumer Services, *Security Officer Training Curriculum Guide* (July 2010) [hereinafter *Security Officer Training*].

³⁴ Section 493.6113(b), F.S.

³⁵ *Security Officer Training*, *supra* note 33.

³⁶ Section 493.6113(3)(b), F.S.

the superintendent, may designate one or more designees to carry a concealed weapon or firearm on school property. The bill does not require the designee to possess a concealed weapon license. Weapons or firearms may only be carried in a concealed manner and must be on the designee's person at all times while performing official school duties.

For purposes of the prohibition on possessing or discharging weapons or firearms at a school, the bill amends the definition of "school" to exclude career centers and postsecondary institutions. Accordingly, the bill permits possession or discharge of a weapon or firearm at a career center or postsecondary institution without invoking a criminal penalty under s. 790.115, F.S., which prohibits possessing or discharging a weapon or firearm at a school-sponsored event or on school property. However, current law otherwise prohibits the discharge of a firearm in public³⁷ and the carrying of a concealed weapon or firearm on a career center or postsecondary institution campus.³⁸ The prohibition on carrying a concealed weapon or firearm does not apply if the individual carrying the weapon or firearm holds a valid license.³⁹ In addition, because the bill's amended definition of school excludes career centers, a provision of s. 790.115, F.S., which exempts from criminal penalty the carrying of a firearm in a case at a career center campus with a firearms training range,⁴⁰ would no longer be applicable.

The bill requires designated personnel to annually complete eight hours of active shooter training and four hours of firearm proficiency training and submit to the authorizing principal or superintendent proof of completion of a minimum of 40 hours of a school safety program.

The bill requires that a designee:

- Be a military veteran who was honorably discharged and who has not been found to have committed a firearms-related disciplinary infraction during his or her service;
- Be an active duty member of the military, the National Guard, or military reserves who has not been found to have committed a firearms-related disciplinary infraction during his or her service;
- Be a law enforcement officer or a former law enforcement officer who has not been found to have committed a firearms-related disciplinary infraction during his or her law enforcement service; or
- Possess a valid license to carry a concealed weapon or firearm pursuant to state law.

The bill provides that s. 790.115, F.S., does not apply to designees in the conduct of official school duties.⁴¹ Among other things, this appears to exempt designees, when performing official school duties, from penalties for:

- Failure 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; and
- Rude, careless, angry, or threatening exhibition of a weapon or firearm on school property or at school functions.

The bill does not provide for screening against other offenses related to carrying, possessing, purchasing, manufacturing, discharging or exhibiting weapons or firearms under chapter 790, F.S.

Designees must complete a minimum of 40 hours of a school safety program and annually complete eight hours of active shooter training and four hours of firearm proficiency training. It is unclear what cost is associated with completing a school safety program or active shooter training. A sampling of training provider websites indicates a cost of \$99 for a four-hour statewide firearms license recertification course.⁴² The bill is silent regarding whether the designee or school district is to pay the

³⁷ See Section 790.15, F.S.

³⁸ See Section 790.01, F.S.

³⁹ *Id.*

⁴⁰ Section 790.115(2)(a)2., F.S.

⁴¹ This could be construed to mean that no provisions of the section, including the provisions of this bill, would apply to designees.

⁴² Onsite Tactical Training Institute, *Class "G" Recertification*, <http://ostti.com/glicrecert.php> (last visited Feb. 28, 2014).

cost of training. Accordingly, each district can decide how expenses for designee training are to be borne.

The bill requires district school board policies and procedures for emergencies and emergency drills to include active shooter and hostage situations. The bill requires each district school board to address active shooter situations in the board's model emergency management and emergency preparedness procedures. The training for each school must be conducted by the law enforcement agency or agencies that are designated as first responders to the school's campus.

The bill requires each district school superintendent to provide recommendations, which identify strategies and activities that the district school board should implement in order to improve school safety and security, and which currently are provided only to the district school board,⁴³ to the local law enforcement agencies that are first responders to the district's school campuses.

In addition, each district school board must provide construction plans for new schools to the designated first responding law enforcement agency for review and comment before the construction bid process begins. Any recommended changes by the law enforcement agency must be incorporated into the plans by the district school board before a construction bid may be awarded. If law enforcement makes a recommendation that the district school board finds untenable, the district must still make the law enforcement agency's recommended change.

The bill specifies that a district school board may commission one or more school safety officers for the protection and safety of school personnel, property, and students on each school campus, instead of simply within the district.

B. SECTION DIRECTORY:

Section 1. Provides a statement of legislative intent.

Section 2. Amends s. 790.115, F.S., providing an exception to the prohibition on possession of firearms and other specified devices on school property; providing for school safety programs by which persons may be designated to carry a concealed weapon; providing requirements for designees.

Section 3. Amends s. 1006.07, F.S., requiring school boards to formulate policies and procedures for managing active shooter and hostage situations; requiring that active shooter training for each school be conducted by the law enforcement agency that is designated as the first responder agency for the school; requiring that plans for new schools be reviewed by law enforcement agencies; requiring that all recommendations made by reviewing law enforcement agencies be incorporated in such plans before construction contracts may be awarded.

Section 4. Amends s. 1009.12, F.S., permitting district school boards to commission one or more school safety officers on each school campus.

Section 5. Amends s. 435.04, F.S., conforming cross-references.

Section 6. Amends s. 790.251, F.S., conforming cross-references.

Section 7. Amends s. 921.0022, F.S., conforming cross-references.

Section 8. Amends s. 1012.315, F.S., conforming cross-references.

Section 9. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁴³ Section 1006.07(6), F.S.
STORAGE NAME: h0753.KTS
DATE: 3/10/2014

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 42-44, 120-123: The bill eliminates career centers and postsecondary institutions from the definition of "school" for purposes of the prohibition on possessing or discharging weapons or firearms at a school. Accordingly, the criminal penalties identified in s. 790.115 for possession of a weapon or firearm or discharge of a firearm at a school are not applicable to career centers or postsecondary institutions. However, prohibitions on discharging a firearm in public and possessing a concealed weapon or firearm would apply, except that individuals who have a license to carry a concealed weapon or firearm would be permitted to carry the weapon or firearm on a career center or postsecondary institution campus.

Lines 63-69, 94-102: The bill specifically provides for designation of school personnel as authorized to carry a concealed weapon. However, with respect to administration buildings, it is unclear under the bill whether the district superintendent may only designate school personnel but not district-level personnel who are not employed on a school campus.

Lines 69, 94-96: The bill provides that a school safety designee program may be created for “employees or volunteers.” However, only “school personnel” are exempted from the requirements of s. 790.115, F.S. These provisions of the bill appear to be in conflict.

Lines 227-235: With respect to proposed construction plans for new schools, any recommended changes by the designated law enforcement agency must be incorporated into the plans by the district school board before a construction bid may be awarded. Even if the law enforcement agency makes a recommendation that the district school board finds untenable, the district must still incorporate the recommended change.

Line 63 contains a technical error that exempts all designees from the provisions of s. 790.115, including the provisions of this bill. The text should specifically refer to any specific subsections, instead of the entire section, that are not applicable to designees.

The bill does not provide for screening against other offenses related to carrying, possessing, purchasing, manufacturing, discharging or exhibiting weapons or firearms under chapter 790, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.