HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1097 School Safety
SPONSOR(S): K-12 Subcommittee; Steube and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1418

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	10 Y, 3 N, As CS	Beagle	Ahearn
2) Judiciary Committee		Keegan	Havlicak

SUMMARY ANALYSIS

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 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. Not all schools are assigned a school safety officer. The law does not specifically authorize a school principal to designate school district personnel to carry a concealed weapon or firearm for the protection of students and school employees.

Florida law authorizes the Department of Agriculture and Consumer Services to issue private security officer and state firearms licenses. Among other criteria, applicants must pass a fingerprint-based criminal background check and complete training requirements.

The bill authorizes a public school principal to designate a member of a school district's personnel to carry a concealed weapon or firearm on school district property. Similar authority is provided to district school superintendents regarding school district administration buildings. Weapons or firearms must only be carried in a concealed manner on the individual's person at all times while performing official school duties. Such personnel must complete private security officer licensing training and statewide firearms license recertification training, with exceptions. They are not required to obtain the licenses associated with required training. For purposes of such designation, "school" means any public or private elementary school, middle school, junior high school, or secondary school.

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

The bill takes effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Gun Free School Zones

Federal Law

Federal law prohibits the knowing possession of a firearm that has moved in 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 on 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 moved in 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:

- Exhibition of a weapon[5] 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-

[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] Section 790.115(2)(a), F.S. (flush left provision at end of paragraph).
[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. Section 790.001(13), F.S. Exhibiting a

sponsored event, or within 1,000 feet[6] 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 weapon[10] 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:

    - Willful and knowing unlawful possession of a firearm on school property or a school bus or at a school bus stop or school-sponsored activity or event is 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 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.[15]

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.

School districts may adopt policies waiving the vehicle exception for purposes of student and campus parking privileges.[16]

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,

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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.

[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. Section 790.115(1), F.S.

[7] Section 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. Sections 775.082(3)(d) and 775.083(1)(c), F.S.

[9] Section 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] Section 790.115(2)(e), F.S.

[12] 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.

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

[14] Section 790.115(2)(d), F.S.

[15] 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.

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

except for specified locations, e.g., school or college athletic events; elementary, secondary, and postsecondary schools; and career centers.[17]

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.[18]

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.[19]

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.[20]

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.[21] 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 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.[22]

Background Screening

Florida law requires school district employees to undergo a fingerprint-based background screening as a condition of employment.[23] Instructional and noninstructional personnel[24] and noninstructional school

[17] Section 790.06, F.S.
[18] 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.
[19] 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 March 12, 2013). The self-assessment is developed by the Office of Program Policy Analysis and Government Accountability. *Id.*
[20] Section 1006.07(6), F.S.
[21] Section 1006.12(2)(a) and (c), F.S.
[22] Section 1006.12(2)(b) and (d), F.S.
[23] 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.

district employees and contracted personnel[25] must undergo Level 2 background screening.[26] Level 2 background screening requires individuals to be screened against a statutorily prescribed list of 51 criminal offenses.[27] Such employees must be rescreened every five years.[28]

Private Security Officer and Statewide Firearms License 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.[29] 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.[30]

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 to license renewal.[31] 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.[32] In lieu of proof of statewide firearms recertification training, such personnel 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.[33]

Effect of Proposed Changes

The bill authorizes a public school principal to designate a member of a school district's personnel to carry a concealed weapon or firearm on school district property. Similar authority is provided to district school superintendents regarding school district administration buildings. Weapons or firearms must only be carried in a concealed manner on the individual's person at all times while performing official school duties. For purposes of such designation, "school" means any public or private elementary school, middle school, junior high school, or secondary school. *See* Drafting Issues or Other Comments.

Designated personnel must submit to the authorizing principal or superintendent proof of completion of private security officer licensing training and annual statewide firearms license recertification training. As is currently authorized, proof of state or federal law enforcement certification or specified firearms certifications and annual firearms requalification may be submitted in lieu of proof of statewide firearms

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[24] 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.
[25] 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.
[26] Sections 1012.32(1)-(2), 1012.465(2), and 1012.56(10), F.S.
[27] *See* ss. 435.04, 1012.32(2), 1012.465(1), and 1012.56(10), F.S.
[28] Sections 1012.465(2) and 1012.56(10)(b), F.S.
[29] Section 493.6303(4)(a), F.S.
[30] Florida Department of Agriculture and Consumer Services, *Security Officer Training Curriculum Guide* (July 2010) [hereinafter *Security Officer Training*].
[31] Section 493.6113(2)(b), F.S.
[32] *Security Officer Training*, *supra* note 29.
[33] Section 493.6113(3)(b), F.S.

license recertification training. Designated personnel are not required to obtain the licenses associated with required training.

The bill provides that s. 790.115, F.S., does not apply to school district personnel who have been designated by the school principal to carry a concealed weapon or firearm on school district property in the conduct of official school duties. Among other things, this appears to exempt designated personnel, 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.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.115, F.S., relating to Possessing or discharging firearms on school property prohibited; authorizes a school principal or school superintendent to designate school district personnel to carry a concealed weapon or firearm on school district property; specifies requirements.

Section 2. Amends s. 1006.12, F.S., relating to School resource officers and school safety officers; conforms provisions.

Section 3. Amends s. 435.04, F.S., relating to Level 2 screening standards; conforms provisions.

Section 4. Amends s. 790.251, F.S., relating to Protection of the right to keep and bear arms in motor vehicles; conforms provisions.

Section 5. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; conforms provisions.

Section 6. Amends s. 1012.315, F.S., relating to Disqualification from employment; conforms provisions.

Section 7. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

School district personnel who are designated to carry a concealed weapon or firearm must complete 40 hours of private security officer licensing training and an annual four hour statewide firearms license recertification course. A sampling of training provider websites indicates a cost of $150 for private security officer license training[34] and $99 for statewide firearms license recertification.[35] The bill does not specify whether the personnel or the school district bears the cost of such training.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 45-49 and 51: The bill authorizes a public school principal to designate a “member of a school district's personnel” to carry a concealed weapon or firearm on “school district property.” The bill defines "school" as any public or private elementary school, middle school, junior high school, or secondary school and limits the carrying of a concealed weapon or firearm by designated personnel to “official school duties.”

Use of the term “a member of a school district’s personnel” does not limit designations to personnel assigned to the principal’s school and may include classroom teachers, school administrators, nonclassroom instructional personnel, district administrators, and education support personnel, e.g., secretaries, cafeteria workers, and janitors.[36]

Use of the term “school district property” rather than the term “school property” to describe where designated personnel may carry a concealed weapon or firearm appears to authorize a principal to designate personnel to “carry” on school property throughout the district, not just at the school the principal oversees.

By defining “school” to include private schools, it appears that the bill contemplates granting private school principals authority to designate personnel to carry a concealed weapon or firearm. However, use of the terms “school district personnel” and “school district property” do not capture private schools and creates a conflict within the bill.

Consideration might be given to using the terms “school personnel” rather than “school district personnel” and “school property” rather than “school district property” to describe who designated personnel are and where they may carry a concealed weapon or firearm. This would align the scope of the designation with the definition of “school” and clarify the bill’s applicability to both public and private schools.

[34] ASK Bodyguard Training, *Prices*, http://www.floridadlicensetraining.com/florida-d-license-prices/ (last visited March 21, 2013).
[35] Onsight Tactical Training Institute, *Class “G” Recertification*, http://ostti.com/glicrecert.php (last visited March 21, 2013).
[36] Personnel classifications are defined in s. 1012.01, F.S.

Lines 50-58: Because the carrying of a concealed weapon or firearm is not limited to school hours, it appears that this would also be allowable at school events or any other time designated personnel are conducting official school duties.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the K-12 Subcommittee adopted three amendments to HB 1097 and reported the bill favorably as a committee substitute. The amendments:

- Removed provisions requiring each school board to commission a school safety officer for each school in the school district, except for schools in which the principal has authorized school district personnel to carry a concealed weapon or firearm.
- Added provisions clarifying that designated personnel must carry the weapon or firearm on their person at all times.
- Added private schools to the bill's definition of "school."

This analysis is drafted to the committee substitute as passed by the K-12 Subcommittee.