1989

Session Law 89-306

Florida Senate & House of Representatives

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Recommended Citation
H 873 GENERAL BILL/CS/1ST ENG by Criminal Justice; Flagg and others (Identical CS/S 831, Compare CS/1ST ENG/H 1033, S 1263)
Assault Weapons Commission: creates said commission & provides for its membership & purpose; provides for commission to make recommendations re unlawful usage of assault weapons in state; provides minimum sentence for possessing certain firearms during commission of specified offenses, etc. Amends 775.087.
Effective Date: 10/01/89.

03/08/89 HOUSE Prefiled
03/10/89 HOUSE Referred to Criminal Justice; Appropriations
03/15/89 HOUSE Subreferred to Subcommittee on Prosecution and Punishment
04/04/89 HOUSE Introduced, referred to Criminal Justice; Appropriations
04/10/89 Withdrew to Subcommittee on Prosecution and Punishment
04/13/89 HOUSE Subreferred to Subcommittee on Prosecution and Punishment; On Committee agenda—Criminal Justice, 04/13/89, 8:00 am, 21-HOB—Discussed; On subcommittee agenda—Criminal Justice, 04/17/89, 3:45 pm, 21-HOB—Discussed
04/17/89 HOUSE On Committee agenda, pending subcommittee action—Criminal Justice, 04/19/89, 8:30 am, 21-HOB—Not considered
04/21/89 HOUSE On subcommittee agenda—Criminal Justice, 04/25/89, 8:30 am, 21-HOB
04/25/89 HOUSE Subcommittee Recommendation: Favorable with 4 amendments; On Committee agenda—Criminal Justice, 04/27/89, 1:30 pm, 21-HOB—Temporarily passed
04/28/89 HOUSE On Committee agenda—Criminal Justice, 05/02/89, 8:30 am, 21-HOB
05/02/89 HOUSE Preliminary Committee Action by Criminal Justice: Favorable as a CS
05/17/89 HOUSE Comm. Report: CS by Criminal Justice —HJ 522; CS read first time —HJ 519; Now in Appropriations —HJ 522
05/22/89 HOUSE On Committee agenda—Appropriations, 05/23/89, 8:00 am, 21-HOB
05/23/89 HOUSE Preliminary Committee Action by Appropriations: Favorable with 2 amendments
05/25/89 HOUSE Comm. Report: Favorable with 2 amendment(s) by Appropriations, placed on Calendar —HJ 556; Placed on Special Order Calendar
05/30/89 HOUSE Read second time —HJ 782; Amendments adopted; Read third time; CS passed as amended; YEAS 112 NAYS 3 —HJ 784
06/30/89 SENATE In Messages
06/31/89 SENATE Received, referred to Judiciary—Criminal; Rules and Calendar —SJ 820
06/02/89 SENATE Withdrawn from Judiciary—Criminal; Rules and Calendar; Substituted for CS/SB 831; CS passed; YEAS 40 NAYS 0 —SJ 897
06/02/89 Ordered enrolled
06/20/89 Signed by Officers and presented to Governor
07/05/89 Approved by Governor; Chapter No. 89-306

NOTES: Above bill history from Division of Legislative Information's FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.
I. SUMMARY:

A. PRESENT SITUATION:

Florida law permits the possession of military style assault weapons and high capacity detachable box magazines.

Possession or use of a firearm while committing a murder, sexual battery, robbery, burglary, arson, aggravated assault or battery, kidnapping, escape or breaking and entering with intent to commit a felony, will enhance the felony by one degree and require the defendant to serve a mandatory three year term in prison.

B. EFFECT OF PROPOSED CHANGES:

The bill creates a Commission on Assault Weapons to make recommendations to combat the unlawful use of assault weapons. The commission must submit a report by March 1, 1990 to the governor and the Legislature and shall be composed of eleven members: two members from groups that support strict regulation of the possession of firearms, two from groups that oppose such regulation (one from each group to be appointed by the President, and one by the Speaker); two senators, two representatives, two law enforcement agency members, and one citizen member. The members of the commission serve without compensation and the commission shall be abolished on June 30, 1990.

The bill also provides that any person who commits a crime listed above in subsection A. or of the sale, manufacture, delivery, purchase, or possession with intent to distribute any controlled substance and who has a machine gun or a semi-automatic firearm...
and a high-capacity detachable box magazine (20 rounds or more) in his possession shall be sentenced to a minimum term of imprisonment of eight years.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 provides legislative findings and intent.

Section 2 creates the commission, prescribes membership, duties and date of abolition.

Section 3 provides minimum mandatory sentencing for the commission of certain crimes with a machine gun or a semiautomatic firearm with a detachable box magazine as defined.

Section 4 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   Indeterminate

2. Recurring or Annualized Continuation Effects:
   Indeterminate

3. Long Run Effects Other Than Normal Growth:
   Indeterminate

4. Appropriations Consequences:
   There will be costs associated with per diem and travel expenses for the assault weapons commission members. One could also expect increased burdens on the corrections system on account of the minimum mandatory sentences of eight years.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   Indeterminate

2. Recurring or Annualized Continuation Effects:
   Indeterminate

3. Long Run Effects Other Than Normal Growth:
   Indeterminate
C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   Indeterminate

2. Direct Private Sector Benefits:
   Indeterminate

3. Effects on Competition, Private Enterprise, and Employment Markets:
   Indeterminate

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

This bill is consistent with the state comprehensive plan goals of punishing criminal behavior.

IV. COMMENTS:

This bill is consistent with the committee mission statement insofar as it pertains to the regulation of firearms.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by:       Staff Director:

[Signature]       [Signature]
Hassler

SECOND COMMITTEE OF REFERENCE:
Prepared by:       Staff Director:

[Signature]       [Signature]

APPROPRIATIONS:
Prepared by:       Staff Director:

[Signature]       [Signature]
I. SUMMARY:

A. Present Situation:

In 1987 and 1988, the Florida Legislature enacted provisions relating to the regulation of weapons and firearms. The Legislature emphasized its substantial interest in firearms issues by preempting the field of firearms and ammunition regulation. s. 790.33, F.S. But for optional county waiting periods, weapons and firearms are exclusively regulated at the state level.

The Florida Statutes do not presently define an assault weapon or similar class of semiautomatic firearms and weapons, or provide authority for the formation of a commission to study the issue of firearms regulation in the context of present and future crime trends. Additionally, no panel currently exists to assess the overall magnitude of the assault weapon and other firearms issues and to prescribe appropriate remedies.

Existing statutes do provide, however, that whenever a defendant is charged with a felony, except a felony where the use of a weapon or fire arm is an essential element, and the defendant carries, displays, uses, or threatens to use a weapon or firearm during the felony, the penalties are enhanced one degree. s. 775.087(1), F.S.

Whoever possesses a firearm or destructive device and (1) commits any murder, sexual battery, robbery, burglary, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, or aircraft piracy; (2) attempts to commit these crimes; or (3) batters a law enforcement officer or firefighter while the officer or firefighter is engaged in the lawful performance of his duties will, upon conviction, be sentenced to a minimum mandatory sentence of 3 years. Adjudication of guilt or imposition of sentence may not be suspended, deferred, or withheld. Additionally, the defendant is not eligible for parole, gain-time, or provisional credits before completing the minimum mandatory sentence. ss. 775.087(2), 944.277, F.S. (1987 and 1988 Supp.).

Section 775.087(2), F.S., however, does not apply to individuals who possess firearms or destructive devices during the commission of drug offenses.

B. Effect of Proposed Changes:

CS/SB 831 would create the Commission on Assault Weapons, a statewide body responsible for providing recommendations concerning the unlawful use of assault weapons in the state. This Commission would be required to submit its findings and recommendations, identifying the types of weapons and firearms...
being used in the commission of crime, to the Governor and Legislature by March 1, 1990. The Commission, which would be assigned to the Department of State, would be comprised of 11 members to be appointed by the Governor, the Senate President and the House Speaker. Included among them would be 2 members who oppose and 2 members who favor strict regulation of the possession of firearms. These 4 members would be appointed by the President of the Senate and the Speaker of the House of Representatives. The Commission would be abolished on June 30, 1990.

Section 3 of the CS would amend s. 775.087(2), F.S., which establishes criminal penalties for the possession of a firearm during the commission of specified crimes. The amended section would provide that any person who possesses, while engaging in any of the specified felonies, a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun as defined in s. 790.001 shall be sentenced to a minimum term of imprisonment of 8 calendar years. The CS adds drug offenses to the list of offenses currently specified in existing law. However, drug offenses would be covered by a minimum penalty only when committed by an offender who possesses a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.

Under the CS, parole and all forms of gain-time would be unavailable. Upon conviction, offenders would serve, at the very least, an entire 8 calendar year prison term.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

The Department of Corrections has stated that this legislation could produce a substantial impact on the offender populations. Such an impact could result from the 8-year minimum mandatory prison term. However, the department reports that empirical data relating to the number of offenders convicted and admitted to prison for using an assault weapon in the commission of a felony are presently unavailable.

The Department of State indicates that general revenue will be required to administer certain provisions of the CS. According to the department, Division of Licensing trust funds would be unable to support these responsibilities.

During the initial year of implementation (FY 1989-90), $94,828 will be required to meet costs for other personal services (OPS) and expenses. The following amounts are based upon an 11-member Commission holding 12 meetings.

Commission with 11 members, Dept. of State to pay travel:

\[
\begin{array}{cc}
\text{Members} & 11 \\
\times \text{Trips for meetings} & 12 \\
\hline
\text{Average cost per trip} & $400 \\
\text{Travel cost for Commission} & $52,800 \\
\end{array}
\]

Commission staff travel:

\[
\begin{array}{cc}
\text{Staff members (includes 1 Dept. of State employee)} & 3 \\
\times \text{Trips for meetings} & 12 \\
\hline
\text{Average cost per trip} & $400 \\
\text{Total travel cost} & $14,400 \\
\end{array}
\]
Commission expenses (other than travel):

$163  Publishing of notice of meetings in Administrative Weekly
+ $500  Office supplies and printing costs

$663

Commission staff (OPS):

$14,025  Administrative Assistant (9 months)
+ $12,940  Executive Secretary (9 months)

$26,965

The figures supplied by the department are projected expenditures for operating the Commission for a 9-month period from October 1, 1989, through June 30, 1990.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.