

Legislative Analysis



ALLOW RETIRED LAW ENFORCEMENT OFFICERS TO CARRY CONCEALED WEAPON NATIONWIDE

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4611 with House committee amendments
Sponsor: Rep. Rick Jones

House Bill 4612 without amendment
Sponsor: Rep. John Espinoza
Committee: Judiciary

First Analysis (8-7-07)

BRIEF SUMMARY: House Bill 4611 would create a mechanism by which retired law enforcement officers could obtain certification allowing them to carry a concealed weapon nationwide under the federal Law Enforcement Officers Safety Act. It would also create penalties (state civil infraction, misdemeanor, and felony) for violations of the bill. House Bill 4612 would place the felony provision within the sentencing guidelines.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on the state and local governments. See a more detailed discussion later in the analysis.

THE APPARENT PROBLEM:

After the events of September 11, 2001, there was a concern that a city suffering an attack by terrorists or severe damage from an "act of God," such as a tornado or earthquake, may experience an insufficient number of available law enforcement officers needed to protect the public safety, prevent looting, and assist in rescue efforts. In response, the federal Law Enforcement Officers Safety Act of 2004 (LEOSA) was enacted to provide for the carrying of concealed firearms across state lines by qualified active and retired law enforcement officers (18 USC 926C). An active or retired officer cannot carry as a concealed weapon a machine gun, a silencer, or an explosive device that propels an object.

Regarding the provisions relating to retired officers, one requirement of LEOSA is that the retired officer must meet, at his or her own expense, the same state standards for training and qualifications for weapons proficiency as active law enforcement officers, and must do so within the most recent 12-month period. A retired officer must also carry a photographic identification issued by the agency from which he or she retired. Either as part of the ID issued by their former agency or in a separate certification issued by the state in which they live, retired officers must also carry documentation that they meet the weapons qualifications for the type of concealed weapon carried.

Reportedly, numerous retired law enforcement officers have sought to obtain the necessary documentation to carry a concealed weapon across state lines under the provisions of the federal law only to learn that there currently is no statewide provision or

policy in place for either state or local law enforcement agencies to certify that a retired officer has proficiency in a particular firearm or to issue documentation to that effect.

THE CONTENT OF THE BILLS:

House Bill 4611 would create the Michigan Law Enforcement Officer's Firearm Carry Act to establish requirements and procedures through which a qualified retired law enforcement officer could be certified to carry a concealed firearm under the federal Law Enforcement Officers Safety Act and the proposed state act. The bill would prescribe powers and duties of the Michigan Commission on Law Enforcement Standards (MCOLES), establish requirements for persons issued a certificate under the bill, impose criminal and civil penalties for violations of the bill, establish fees, create funds, provide for civil immunity, require forfeiture of the firearm under certain conditions, and allow for the promulgation of administrative rules. House Bill 4612 would place the felony penalty within the sentencing guidelines. The bills would take effect January 1, 2008. More specifically, the bills would do the following:

House Bill 4611

- Define "qualified retired officer" as that term is defined in the federal legislation. (Elements of the federal definition include the officer being retired in good standing; having at least 15 years of service, unless retired due to a service-connected disability; meeting the home state's standard for weapons training and proficiency for active officers at his or her own expense; not being under the influence of alcohol or other intoxicating or hallucinatory drug or substance; and not being otherwise prohibited by federal law from receiving a firearm.)
- Require the Michigan Commission on Law Enforcement Standards (MCOLES) to establish requirements and procedures for use in certifying a qualified law enforcement officer to carry a concealed firearm under the federal LEOSA and also for denying or revoking certification. The commission would also have to identify public entities eligible to administer the active duty firearm standard to the retired officers.
- Apply the bill to qualified retired law enforcement officers meeting the requirements of the LEOSA and who are legal residents of the state.
- Require MCOLES to issue a certificate to a qualified retired officer who had complied with the active duty firearms standard and who is eligible to carry a concealed firearm under LEOSA and the bill. A certificate would be valid for 12 months and would expire on a date to be determined by the commission. A certificate could be renewed annually unless it had been revoked.
- Require retired officers applying for certification to submit to a fingerprint-based identification and criminal history inquiry (this would entail a search of the state and national criminal databases).

- Make providing false or misleading information on the application for certification a felony punishable by up to four years imprisonment and/or a fine of not more than \$2,000.
- Require the retired officer to carry the certificate and a valid Michigan driver license or state ID at all times while in possession of a concealed firearm; produce the documents upon demand by a peace officer; disclose to a peace officer that he or she is carrying a concealed firearm or transporting a firearm in his or her vehicle if stopped by a peace officer; and forfeit the certification to MCOLES upon notice of revocation. A violation of these provisions subjects the retired officer to the civil infraction penalties under the state concealed weapons law, including forfeiture of the weapon.
- Specify that certification constitutes implied consent to submit to a chemical analysis (i.e., breathalyzer test).
- Require a certificate holder to report in writing to MCOLES on specific circumstances, including an arrest or conviction of any state or federal law, being the subject of a personal protection order, or failing a drug test. Failure to file a report would be a misdemeanor punishable by imprisonment for not more than a year and/or a fine of not more than \$5,000.
- Prohibit, in general, a certificate holder from carrying a concealed weapon while under the influence of alcohol and prescribe state civil infraction penalties, misdemeanor penalties, and permanent or temporary certification revocation based on the underlying bodily alcohol content (BAC) level.
- Require the Department of State Police to create and maintain a database of applicants for certification under the bill and include, among other information, the applicant's name, date of birth, and address and the certificate number and date of expiration or reason for denial of a certificate. Information in the database would not be disclosable under the Freedom of Information Act (FOIA).
- Require the department to file an annual report with the Legislature that includes, among other information, the number of certificate applications received, issued, denied, or revoked as well as the number of charges of state civil infractions and criminal violations that resulted in a finding of a responsibility or a criminal conviction. This information would be subject to disclosure under FOIA.
- Subject firearms carried in violation of the bill to seizure and forfeiture in the same manner as property is under provisions of the Revised Judicature Act.
- Allow MCOLES to set and collect a fee to cover actual costs associated with administering the federal LEOSA and the proposed bill. Fees would be deposited into a newly created Retired Law Enforcement Officer Safety Fund to be used

only for the purposes of the act. Unencumbered balances remaining at the end of a fiscal year would not lapse to the General Fund.

- Provide civil immunity for the commission and various agencies and entities, and their employees, volunteers, and agents, who acted in good faith in discharging their duties, from civil liability for damages resulting from a retired officer, either certified or denied certification, owning, possessing, carrying, using, or discharging a firearm.
- Specify that the bill would not preempt any existing state or federal statute, regulation, or other authority governing the use, possession, carrying, or receiving of firearms or ammunition in this state.
- Require MCOLE's authority to issue certificates under the bill to expire immediately upon the repeal of the federal LEOSA.

House Bill 4612

The bill would amend the Code of Criminal Procedure (MCL 777.11b) to specify that a false statement on the concealed firearm certificate application would be a Class F felony against the public safety with a four-year maximum term of imprisonment. The bill is tie-barred to House Bill 4611.

FISCAL INFORMATION:

House Bill 4611 would have an indeterminate fiscal impact on state and local governments. Under this bill, a retired police officer that applies for a certificate to carry a concealed weapon would be required to submit fingerprint identification and would be subject to criminal history searches, both of which would probably be paid by the applicant. It is unknown how many retired police officers would apply for a concealed weapon certificate under this bill and therefore how many fingerprint identification and criminal history searches would be performed.

The State Police would incur small administrative costs for collecting information from applicants, maintaining computerized databases to store this information, and preparing reports to the Legislature containing information prescribed in this bill.

A Retired Law Enforcement Officer Safety Fund would be created in the Department of Treasury from application fees set by the Michigan Commission on Law Enforcement Standards (MCOLES). The State Treasurer may also invest money in this fund as authorized under state law. MCOLES may expend money from this fund for administering the various components of this bill.

In addition, the bills would have an indeterminate fiscal impact on the state and local correctional systems, depending on how they affected numbers of and sentences for people held responsible for state civil infractions, found guilty of misdemeanors, or found

guilty of felonies. Depending on circumstances, offenders sentenced for criminal offenses may receive probation, a period of incarceration, a fine, or some combination thereof. The following table shows how the revenues and costs of various penalties would affect the state and local units of government.

Responsible for/Guilty of:	Fine	Court-ordered Costs ("Minimum State Costs")	Costs of Incarceration	Costs of Probation Supervision
State Civil Infraction	To local library	\$10 to state Justice System Fund	Not applicable	Not applicable
Misdemeanor	To local library	\$40 to state Justice System Fund	Local costs of incarceration in county jail; costs vary by county	Local.
Felony	To local library	\$60 to state Justice System Fund	Can be sentenced to jail or state prison. Appropriated costs of prison incarceration average about \$31,000 per prisoner per year, including various fixed costs. Actual cost varies by location and security level. Jail costs vary by county	State. Probation and parole supervision average about \$2,000 per supervised offender annually.

ARGUMENTS:

For:

House Bill 4611 is needed to implement provisions of the federal Law Enforcement Officers Safety Act (LEOSA) that permit qualified retired law enforcement officers to carry a firearm across all state lines. Without the bill, a retired officer cannot comply with the documentation and certification requirements of LEOSA. Currently, there is no statewide firearm standard in place for active law enforcement officers, but a prototype standard has been developed recently by the Michigan Commission on Law Enforcement Standards (MCOLES) and is now undergoing formal pilot testing.

The bill would grant MCOLES the authority to apply the new statewide firearm standard to retired officers and also to issue the needed certification. The bill also incorporates other elements of LEOSA, for instance, the prohibition on carrying a firearm while intoxicated or under the influence of certain drugs. Whereas the federal legislation does not contain a penalty provision for violations, the bill would add criminal and state civil infraction penalties for prohibited conduct, such as carrying while drunk or drugged; supplying false information on the application for certification (a felony); or failing to report an arrest, conviction, failed drug test, or being the subject of a personal protection order (misdemeanor). Besides facing criminal and civil fines and possible jail or prison time, an officer who violates the bill's provisions can also have his or her certificate to carry revoked, either temporarily or permanently depending on the underlying violation.

Also, the bill would provide immunity from liability for certain individuals involved in administering or enforcing the act should an incident occur involving a retired officer certified under the bill, or who had been denied certification, that resulted in damages.

Passage of the legislation will mean that retired officers, who have in the past been trained to handle serious and life-threatening situations, will be able to assist in protecting the public and themselves against armed and dangerous individuals.

Response:

House Bill 4611 and the federal LEOSA would not apply to every individual who had worked as a law enforcement officer. For instance, LEOSA's requirement that an individual must have been regularly employed for an aggregate of 15 years, with a narrow exception for officers suffering a duty-related disability, will make some officers ineligible to obtain the certification necessary to carry a firearm nationwide under the LEOSA provisions. However, a retired officer who is not eligible for the nationwide certification may still be eligible to obtain a concealed pistol license under the state concealed pistol law. A Michigan concealed pistol license would still allow a retired officer to carry within the state and also to those states that honor out-of-state concealed pistol licenses.

In addition, certification under House Bill 4611 and LEOSA does not give arrest powers to a retired officer or allow the use of deadly force in the manner allowed for active duty officers. The certification only allows a concealed firearm to be transported across state lines; a retired officer who violated a state's firearm prohibitions would be subject to any appropriate penalties.

Against:

There appear to be several weaknesses with House Bill 4611, as well as inconsistencies between it and the federal LEOSA, including the following:

** The bill specifies that it would not preempt any other state or federal law governing the use, possession, carrying, or receiving of firearms or ammunition in this state. Some have interpreted this as meaning that a Michigan retired law enforcement officer would still have to obtain a state concealed weapons license before applying for a certification under this bill and LEOSA. However, in opinions on LEOSA issued by their respective offices, the attorneys general from Florida and Wisconsin stated that LEOSA did preempt state concealed weapons laws and therefore LEOSA allowed both active duty and retired officers to carry concealed weapons in their own, as well as other, states.

** The bill requires a retired officer to carry, as the required photo identification, a valid Michigan driver license or state ID. However, LEOSA requires that the photo ID be issued by the agency from which the law enforcement officer retired. This could be problematic for the retired Michigan officer who carries a firearm across state lines if he or she is considered to be in violation of LEOSA by officers in a different state.

** The definition of "firearm" in House Bill 4611 is broader than in LEOSA. Machine guns, silencers, and certain types of explosive devices are not allowed to be carried as concealed weapons within or across state lines under LEOSA but would be allowed under the bill. This could cause confusion as to which definition would trigger a violation.

** The bill would create a database that current law enforcement officers could access to check the validity of a certificate presented by a retired officer from Michigan. However, the bill is silent as to the policy or procedures an officer would follow to check the validity of an out-of-state certification.

** The penalties contained in House Bill 4611 appear to only pertain to Michigan-certified retired officers. It is not clear what penalties, if any, a retired officer certified in another state would be subject to if he or she violated the provisions of LEOSA within this state.

** House Bill 4611 as reported from committee contains a typographical error in the definition of "controlled substance" which should be clarified. The bill cites Section 7104 of the Public Health Code, which defines the term as applying to Schedule 1-5 drugs. However, the MCL citation listed is for a provision that prohibits manufacturing, selling, and delivering narcotics and prescribes penalties for violations.

POSITIONS:

The Michigan Commission on Law Enforcement Standards (MCOLES) supports the bills. (7-18-07)

The Fraternal Order of Police – State Lodge of Michigan support the bills. (7-17-07)

The Michigan Office of Attorney General indicated support for the bills. (7-18-07)

The Michigan Sheriffs' Association indicated support for the bills. (7-18-07).

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Jan Wisniewski
Marilyn Peterson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.