

**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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 1330

INTRODUCER: Senator Latvala

SUBJECT: Licensed Security Officers

DATE: March 19, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Cantral</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 1330 amends chapter 493, Florida Statutes, as it relates to security officers, security agency managers, and others.

This bill has an insignificant fiscal impact.

The bill:

- Authorizes a licensed security officer or licensed security agency manager, in uniform and on the premises of a critical infrastructure facility, who has probable cause to believe that a person has committed or is committing a crime against the client operating the premises or the client’s patron, to temporarily detain the person to ascertain the person’s identity and the circumstances of the person’s activity. The bill provides procedures for notifying law enforcement and transferring the detained person.
- Authorizes the licensed security officer or licensed security agency manager, while temporarily detaining the person, to search the detainee or the detainee’s belongings if the officer or manager observes that the person is armed with a firearm, concealed weapon, or destructive device that poses a threat to the safety of the officer, manager, or any person for whom the officer or manager is responsible for providing protection, or if the detainee admits to having a weapon in his or her possession. The search may only be to the extent necessary to disclose the presence of the weapon. The bill provides procedures for seizure and transfer of the weapon.
- Makes it a first degree misdemeanor for a person to engage in any activity for which chapter 493, Florida Statutes, requires a license if the person does not hold the required

license, if this is the offender's first violation. A second or subsequent violation is a third degree felony and the Department of Agriculture and Consumer Services may seek the imposition of a civil penalty not to exceed \$10,000. This offense does not apply if the person engages in unlicensed activity within 90 days after the expiration date of the person's license.

- Makes it a third degree felony for a person, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under chapter 493, Florida Statutes, to knowingly and intentionally force another person to assist the impersonator in an activity within the scope of duty of a professional licensed under chapter 493, Florida Statutes. However, it is a second degree felony if a person commits this violation during the course of committing a felony, and a first degree felony if a person commits this violation during the course of committing a felony that results in death or serious bodily injury to another human being.
- Specifies uniform and badge or patch requirements for a security officer or security agency manager who possess a valid Class "G" license performing duties regulated under section 493.631, Florida Statutes, which is created by the bill.
- Provides that a law enforcement officer, security officer, or security agency manager is not criminally or civilly liable for false arrest, false imprisonment, or unlawful detention due to his or her custody and detention of a person, if done in compliance with section 493.631, Florida Statutes.

This bill has an effective date of July 1, 2013.

This bill substantially amends section 493.6120 of the Florida Statutes. The bill creates section 493.631, Florida Statutes.

## II. Present Situation:

The Division of Licensing within the Department of Agriculture and Consumer Services (department) is responsible for the regulation and licensing of private security, private investigative, and recovery services.<sup>1</sup> Section 493.6101(19), F.S., defines a "security officer" as:

any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.

Section 493.6101(16), F.S., defines a "private investigator" as "any individual who, for consideration, advertises as providing or performs private investigation." Private investigation is defined as an investigation to obtain information on any of the following matters:

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<sup>1</sup> The responsibility for regulating private investigative, private security, and recovery industries was assigned to the Department of State in 1965. In 2002, the Division of Licensing of the Department of State was transferred to the Department of Agriculture and Consumer Services, including the Concealed Weapons Permit Program. *See* ss. 1, 3-10, ch. 2002-295, L.O.F.

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefore.<sup>2</sup>

Section 493.6101(21), F.S., defines a “recovery agent” as “any individual who, for consideration, advertises as providing or performs repossessions.” Section 493.6101(20), F.S., defines “recovery agency” as “any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.” Section 493.6101(22), F.S., defines “repossession” as recovery of motor vehicles, motor boats, airplanes, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment, “by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause.”

Certain individuals are exempt from the licensing requirements for private security and private investigative services. These individuals include, but are not limited to: local, state, and federal law enforcement officers, licensed insurance investigators or adjusters; individuals solely, exclusively, and regularly employed as unarmed investigators and security officers “in connection with the business of his or her employer, when there exists an employer-employee relationship”; and any unarmed individual engaged in security services who is employed exclusively to work on the premises of her or his employer, or “in connection with the business of her or his employer, when there exists an employer-employee relationship.”<sup>3</sup>

Section 493.6106(1), F.S, establishes criteria for granting licenses for security, private investigative, and repossession services. Individuals seeking a license must clear a criminal background check as well as meet specific training and experience requirements, which vary by the type of license. In addition, the applicant must meet the following criteria:

- Be at least 18 years of age.
- Be of good moral character.
- Not have been adjudicated incapacitated, unless capacity has been judicially restored.
- Not have been involuntarily placed in a treatment facility for the mentally ill, unless competency has been judicially restored.

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<sup>2</sup> Section 493.6101(17), F.S.

<sup>3</sup> Section 493.6102(1)-(4), F.S.

- Not have been diagnosed as having an incapacitating mental illness, unless a psychologist or psychiatrist licensed in this state certifies that she or he does not currently suffer from the mental illness.
- Not be a chronic and habitual user of alcoholic beverages to the extent that her or his normal faculties are impaired.
- Not have been committed under ch. 397, F.S., former ch. 396, F.S., or a similar law in any other state.
- Not have been found to be a habitual offender under s. 856.011(3), F.S., or a similar law in any other state.
- Not have had two or more convictions under s. 316.193, F.S., or a similar law in any other state within the 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently impaired and has successfully completed a rehabilitation course.
- Not have been committed for controlled substance abuse or have been found guilty of a crime under ch. 893, F.S., or a similar law relating to controlled substances in any other state within a 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently abusing any controlled substance and has successfully completed a rehabilitation course.
- Be a citizen or permanent legal resident alien of the United States or have appropriate authorization issued by the United States Citizenship and Immigration Services of the United States Department of Homeland Security.

**License Classifications**

Chapter 493, F.S., provides for numerous classifications of licenses within the three general categories of licenses, as follows:<sup>4</sup>

PRIVATE INVESTIGATION	
Agency	Class "A"
Private Investigator	Class "C"
Armed Private Investigator	Class "C" & Class "G"
Branch Office	Class "AA"
Manager	Class "C" or Class "MA" or Class "M"
Intern	Class "CC"
PRIVATE SECURITY	
Agency	Class "B"
Security Officer	Class "D"
Armed Security Officer	Class "D" & Class "G"
Branch Office	Class "BB"
Manager	Class "MB" or Class "M"
REPOSSESSION ACTIVITY	
Agency	Class "R"
Recovery Agent	Class "E"
Branch Office	Class "RR"
Manager	Class "MR" or Class "E"
Intern	Class "EE"
COMBINED PRIVATE INVESTIGATION AND SECURITY	
Agency	Class "A" & Class "B"

<sup>4</sup> See 5N-1.116(1), F.A.C.

Branch Office Manager	Class "AB" Class "M"
<b>SCHOOLS</b>	
Security Officer School or Training Facility	Class "DS"
Security Officer Instructor	Class "DI"
Recovery Agent School or Training Facility	Class "RS"
Recovery Agent Instructor	Class "RI"
<b>FIREARMS</b>	
Instructor	Class "K"
Statewide Firearm License	Class "G"
<b>MANAGERS</b>	
Private Investigative Agency or Branch	Class "C", "MA", or "M"
Private Security Agency or Branch	Class "MB" or "M"
Recovery Agency or Branch	Class "E" or "MR"
Armed Manager	Appropriate Manager's License and Class "G"

**D, MB, and G Licenses**

An applicant for a Class "D" security officer license must complete a minimum of 40 hours of professional training at a school or training facility licensed by the department, which establishes by rule the general content of the training course and the number of hours of each subject area to be taught. An agency providing security services must also be licensed by the department, and, with certain exceptions, the person managing that agency must have a Class "MB" security agency manager license. If a licensed security officer is required to carry a firearm while on duty and performing regulated services, he must obtain a Class "G" Statewide Firearm License. An applicant for the Class "G" license must complete 28 hours of specialized firearms training, which includes both classroom instruction and range time.<sup>5</sup>

**Detention by Certified Seaport Security Officers**

The seaport security officer designation is not required for an individual to be employed at a seaport as a security officer. The department (through its licensing division) began issuing security officer licenses with the seaport security officer designation in March of 2012. To date, only 34 security officers have submitted proof of training which is required under s. 311.121, F.S., in order to receive the seaport security officer designation.<sup>6</sup>

The statutorily-specified certification curriculum for the seaport security officer training program includes no less than 218 hours of initial certification training that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties.<sup>7</sup>

Pursuant to s. 311.124, F.S., any Class D or Class G seaport security officer certified under the federal Maritime Transportation Security Act of 2002 guidelines or any employee of the seaport security force certified under the federal Maritime Transportation Security Act of 2002 guidelines has the power to detain persons in a reasonable manner for a reasonable period of time

<sup>5</sup> Information provided via e-mail on March 13, 2013, by staff of the Department of Agriculture and Consumer Services.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

pending arrival of a law enforcement officer if they have “probable cause to believe that a person is trespassing ... in a designated restricted area....”<sup>8</sup> In addition, this action does not “render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.” Furthermore, the seaport security officer must, upon detaining a person for trespass, immediately call a certified law enforcement officer to the scene.

### **Impersonating a Licensee**

Section 493.6118(1), F.S., authorizes the department to “take disciplinary action” against “any unlicensed person engaged in activities regulated” in ch. 493, F.S., related to private security, private investigative, and recovery services. Grounds for such disciplinary action include, but are not limited to:

- Conducting activities regulated under ch. 493, F.S., without a license or with a revoked or suspended license.
- Impersonating, or permitting or aiding and abetting an employee to impersonate, a law enforcement officer.
- Knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, capias, warrant, injunction, or cease and desist order, in the course of business regulated under ch. 493, F.S.
- Violating any provision of ch. 493, F.S.

When the department finds any of the above violations, it may impose an administrative fine not to exceed \$1,000 for every count or separate offense.<sup>9</sup> Section 493.6120, F.S., provides that any person who violates any provision of ch. 493, F.S., with one exception, commits a first degree misdemeanor.<sup>10, 11</sup> The department is authorized to institute judicial proceedings in the appropriate circuit court seeking enforcement of ch. 493, F.S., or any rule or order of the department.<sup>12</sup>

### **The Power to Detain and Search**

Section 901.151(2)-(5), F.S., provides:

- Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county, the officer may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances

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<sup>8</sup> “Restricted area” is defined by 33 C.F.R. part 105. See also s. 311.12, F.S.

<sup>9</sup> Section 493.6118(2)(c), F.S.

<sup>10</sup> The exception is in s. 493.6405, F.S. This section deals with the sale of motor vehicles, mobile homes, motorboats, aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment by a recovery agent or intern, and provides that a violation is a third degree felony.

<sup>11</sup> A first degree misdemeanor is punishable by up to 1 year in a county jail, a fine of up to \$1,000, or both a jail sentence and fine. See ss. 775.082 and 775.083, F.S.

<sup>12</sup> Section 493.6121(6), F.S.

surrounding the person's presence abroad which led the officer to believe that the person had committed, was committing, or was about to commit a criminal offense.<sup>13</sup>

- No person shall be temporarily detained [under the provisions of s. 901.151(2), F.S.] longer than is reasonably necessary to effect the purposes of that subsection. Such temporary detention shall not extend beyond the place where it was first effected or the immediate vicinity thereof.
- If at any time after the onset of the temporary detention authorized by s. 901.151(2), F.S., probable cause for arrest of the person shall appear, the person shall be arrested. If, after an inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of the person shall appear, the person shall be released.
- Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of s. 901.151(2), F.S., has probable cause to believe that any person whom the officer has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, the officer may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses such a weapon or any evidence of a criminal offense it may be seized.

Section 812.015(3)(a), F.S., authorizes a law enforcement officer, a merchant, a farmer, or a transit agency's employee or agent, who has probable cause to believe that a retail theft, farm theft, a transit fare evasion, or trespass, or unlawful use or attempted use of any antishoplifting or inventory control device countermeasure, has been committed by a person and, in the case of retail or farm theft, that the property can be recovered by taking the offender into custody may, for the purpose of attempting to effect such recovery or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time. In the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody.

Section 509.143, F.S., authorizes innkeepers and food service establishment operators to "take a person into custody and detain that person in a reasonable manner and for a reasonable period of time" if there is probable cause to believe the person is engaging in disorderly conduct which threatens the life or safety of the person or others. In these situations, a law enforcement agency must be immediately contacted after detaining the person.

### **"Citizen's Arrest"**

A citizen has a common law right to make a "citizen's arrest" for a felony or a breach of the peace committed in his presence. The citizen may make such an arrest and justify his failure to obtain a warrant by proving the person's guilt.<sup>14</sup>

<sup>13</sup> "This standard is consonant with the holding in *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), which requires 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.' For reasonable suspicion justifying a detention to exist, 'the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.' *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)." *Tillman v. State*, 934 So.2d 1263, 1273 (Fla.2006).

<sup>14</sup> *Phoenix v. State*, 455 So.2d 1024 (Fla.1984).

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 493.6120, F.S., to make it a first degree misdemeanor for a person to engage in any activity for which ch. 493, F.S., requires a license if the person does not hold the required license, if the violation is the person's first violation. A second or subsequent violation is a third degree felony<sup>15</sup> and the department may seek the imposition of a civil penalty not to exceed \$10,000. This offense does not apply if the person engages in unlicensed activity within 90 days after the expiration date of the person's license.

This statute is also amended to make it a third degree felony for a person, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., to knowingly and intentionally force another person to assist the impersonator in an activity within the scope of duty of a professional licensed under ch. 493, F.S. However, it is a second degree felony if a person commits this violation during the course of committing a felony, and a first degree felony if a person commits this violation during the course of committing a felony that results in death or serious bodily injury to another human being.<sup>16, 17</sup>

**Section 2** of the bill creates s. 493.631, F.S., which authorizes a licensed security officer or licensed security agency manager, in uniform and on the premises of a critical infrastructure facility, who has probable cause to believe that a person has committed or is committing a crime against the client operating the premises or the client's patron, to temporarily detain the person to ascertain the person's identity and the circumstances of the person's activity.

When temporarily detaining a person, the security officer or security agency manager must notify the appropriate law enforcement agency of the detention as soon as reasonably possible. A security officer or security agency manager may temporarily detain a person only until a law enforcement officer arrives at the premises of the client and is in the presence of the detainee. Upon arrival of the law enforcement officer, the security officer or security agency manager must immediately transfer custody of a person being temporarily detained to the responding law enforcement officer.

A security officer or security agency manager may not detain a person under this section after the arrival of a law enforcement officer unless the law enforcement officer requests that the security officer or security agency manager continue detaining the person. The authority of the security officer or security agency manager to continue detaining a person after the arrival of a law enforcement officer does not extend beyond the place where the person was first detained or in the immediate vicinity of that place.

A security officer or security agency manager may not temporarily detain a person under this section longer than is reasonably necessary to affect the purposes of this section.

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<sup>15</sup> A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. See ss. 775.082 and 775.083, F.S.

<sup>16</sup> A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. See ss. 775.082 and 775.083, F.S.

<sup>17</sup> A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or both. See ss. 775.082 and 775.083, F.S.

While detaining a person under this section, if a security officer or security agency manager observes that the person temporarily detained is armed with a firearm, concealed weapon, or destructive device that poses a threat to the safety of the security officer, the security agency manager, or any person for whom the security officer or security agency manager is responsible for providing protection, or if the detainee admits to having a weapon in his or her possession, the security officer or security agency manager may conduct a search of the person and his or her belongings only to the extent necessary to disclose the presence of a weapon. If the security officer or security agency manager finds a weapon during the search, he or she shall seize and transfer the weapon to the responding law enforcement officer.

A security officer or security agency manager who possesses a valid Class “G” license shall perform duties regulated under this section in a uniform with at least one patch or emblem visible at all times clearly identifying the agency employing the security officer or security agency manager.

A law enforcement officer, security officer, or security agency manager is not criminally or civilly liable for false arrest, false imprisonment, or unlawful detention due to his or her custody and detention of a person if done in compliance with this section.

The term “critical infrastructure facility” means any one of the following, *if* it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons:

- A chemical manufacturing facility.
- A refinery.
- An electrical power plant as defined in s. 403.031, F.S., including a substation, switching station, electrical control center, or electric transmission or distribution facility.
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station.
- A natural gas transmission compressor station.
- A liquid natural gas terminal or storage facility.
- A telecommunications central switching office.
- A deep water port or railroad switching yard.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

“Security officer” and “security agency manager” mean a security officer or security agency manager who possesses a valid Class “D” or Class “MB” license pursuant to s. 493.6301, F.S., and a valid Class “G” license pursuant to s. 493.6115, F.S.

**Section 3** provides that the bill would take effect on July 1, 2013.

**Other Potential Implications:**

While a person may know that physical barriers and signage indicate that trespassing may be unlawful, they may be unaware that they are in a “critical infrastructure facility” where security

personnel would have the lawful authority to detain and search them, if otherwise warranted. The designation of “critical infrastructure facility” is not necessarily public information.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It is unclear at this point whether the limited searches and seizures which security officers and security agency managers are authorized to make under the bill would raise any Fourth Amendment issues. Since the bill is not law and current law does not specifically provide such search and seizure authorization (e.g., s. 311.124, F.S., which is relevant to seaport security officers, only authorizes temporary *detention* of a person in certain circumstances), there is no relevant and controlling Fourth Amendment case regarding searches and seizures by security officers or security agency managers. However, security officers and security agency managers should be aware that any evidence they seize may be later used as evidence in a criminal case and should be handled accordingly.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not yet reviewed this bill. However, in 2012 the CJIC estimated that a very similar bill (CS/SB 154) would have an insignificant prison bed impact. The Office of Economic and Demographic Research has reviewed the bill and has indicated to staff that it will recommend to the CJIC that the bill will have an insignificant prison bed impact.<sup>18</sup>

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<sup>18</sup> E-mail from EDR staff to Senate Committee on Criminal Justice staff, dated March 7, 2013.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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