

LAW ENFORCEMENT OFFICERS SAFETY ACT
IMPROVEMENTS ACT OF 2010

JULY 27, 2010.—Ordered to be printed

Mr. LEAHY, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 1132]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 1132), to amend title 18, United States Code, to improve the provisions relating to the carrying of concealed weapons by law enforcement officers, and for other purposes, having considered the same, with an amendment, reports favorably thereon and recommends that the bill, as amended, do pass.

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I. BACKGROUND AND PURPOSE OF THE LAW ENFORCEMENT OFFICERS
SAFETY ACT IMPROVEMENTS ACT OF 2010

A. SUMMARY

The purpose of S. 1132, the Law Enforcement Officers Safety Act Improvements Act of 2010 (LEOSA Improvements Act) is to amend existing law to refine the eligibility requirements and procedures

by which active and retired law enforcement officers obtain certification to carry concealed firearms across State lines.¹

B. BACKGROUND AND NEED FOR LEGISLATION

On May 21, 2009, Judiciary Committee Chairman Patrick Leahy introduced the LEOSA Improvements Act, S. 1132,² to make amendments to the existing law (18 U.S.C. §§ 926B–926C), which permits qualified State and Federal law enforcement officers to carry concealed firearms across State lines. Judiciary Committee Ranking Member Jeff Sessions of Alabama, Senator Jon Kyl of Arizona, and Senator Kent Conrad of North Dakota are cosponsors of the legislation.

Since the enactment of the Law Enforcement Officers Safety Act of 2003 (LEOSA), varying State approaches to implementation have hindered the consistent and effective operation of the law, particularly with respect to qualified retired law enforcement officers. Under current law, qualified retired law enforcement officers must carry photographic identification issued by the agency at which they were employed and documentation that certifies they have met, within the most recent 12-month period, the active duty law enforcement standards for qualification for a firearm of the same type as the one they intend to carry. Currently, the firearm aptitude certification component of this document must be issued by the retired officer's former agency or by the State in which the retired officer resides, and pursuant to State active duty firearm testing standards.³

A memorandum issued on January 31, 2005 by then-Attorney General of the United States John Ashcroft complicated the statutory process for retired Federal law enforcement officers. In his memorandum to all Department of Justice law enforcement agencies,⁴ Attorney General Ashcroft directed:

Individual components shall not themselves train or qualify retired employees to carry a firearm, as authorized under the law. In order to be authorized under the Act to carry a firearm, a retired qualified LEO from a DOJ component must qualify pursuant to 18 U.S.C. § 926C(d)(2)(B), and in accordance with state standards for active LEOs.⁵

The effect of the Attorney General Ashcroft's memorandum was to preclude officers who had retired from service with a Department of Justice law enforcement component from certification pur-

¹See 18 U.S.C. §§ 926B–926C (providing the requirements and procedures for qualified law enforcement officers to be certified for carrying a concealed firearm nationally).

²During the Judiciary Committee's consideration of the bill, Chairman Leahy offered a complete substitute amendment, which was adopted and, among other minor changes detailed herein, changed the title of the bill to reflect year in which the Committee approved the bill. The title of the reported bill, as amended, is the Law Enforcement Officers Safety Act Improvements Act of 2010.

³18 U.S.C. §§ 926C(d)(1)–(2). Certification under Section 926C(d)(2)(B) requires:

[A] certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

⁴Bureau of Alcohol, Tobacco, Firearms, and Explosives; Drug Enforcement Administration; Federal Bureau of Investigation; Federal Bureau of Prisons; The Inspector General; United States Marshals Service.

⁵Memorandum from John Ashcroft, Attorney General, to all Department of Justice Law Enforcement Agencies (Jan. 31, 2005) (on file with the Senate Judiciary Committee).

suant to 18 U.S.C. § 926C(d)(1).⁶ This Section provides that a qualified retired officer may demonstrate compliance with the law using a single identification card issued by his or her agency denoting both prior service with the agency and firearms testing within one year prior to the date of carriage. The practical result of Attorney General Ashcroft's directive was to subject individuals who had retired from Federal law enforcement to varying State procedures—and to State law enforcement agencies with which they had not been employed—in order to satisfy the firearms testing requirement of 18 U.S.C. § 926C(d)(2)(B).

To remedy the difficulties that have arisen in some jurisdictions for both Federal and State retired law enforcement officers, S. 1132 provides that a “certified firearms instructor” may conduct testing and qualify retired law enforcement officers.

This change would enable any firearms instructor certified to test active duty law enforcement officers in a State to qualify a retired officer using either the standards set by the State in which the instructor is certified and the officer resides, or in the absence of such standards—or the recognition thereof—the standards of any law enforcement agency in the State. This change will have the dual effect of minimizing the responsibilities of State and Federal law enforcement agencies to administer this testing, and will provide flexibility to retired officers in obtaining such testing and certification.

The legislation would also make clear that those active and retired law enforcement officers who are or were employed by the Amtrak Police Department or the Federal Reserve meet the definition of “qualified active law enforcement officer” and “qualified retired law enforcement officer.”⁷ Because Amtrak is, under Title 49, “not a department, agency, or instrumentality of the United States Government,”⁸ police officers employed by Amtrak do not meet the definition at 18 U.S.C. § 926B(c), which requires an officer to be or have been an “employee of a governmental agency.”⁹

The Amtrak Police Department was first accredited in 1992. It has been reaccredited twice—in 1997 and 2002—by the Commission on Accreditation for Law Enforcement Agencies. Amtrak police officers are assigned to the Federal Bureau of Investigation's Joint Terrorism Task Force and Joint Operations Center in Washington, D.C. In 1999, Congress amended the Omnibus Crime Control and Safe Streets Act of 1968 to allow railroad police officers to attend the FBI's National Academy for Law Enforcement Training.¹⁰ To date, several Amtrak officers have successfully completed that program.

Further, in the most recent Department of Justice report on Federal law enforcement officers, entitled *Federal Law Enforcement Of-*

⁶(d) The identification required by this subsection is

(1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

18 U.S.C. § 926C(d)(1).

⁷ 18 U.S.C. §§ 926B(c), 926C(c).

⁸ 49 U.S.C. § 24301(a)(3).

⁹ 18 U.S.C. § 926B(c).

¹⁰ 42 U.S.C. § 3771(a).

ficers, 2004, the Bureau of Justice Statistics listed the Amtrak Police Department as a Federal law enforcement agency.¹¹

In light of the fact that the officers of the Amtrak Police Department are Federal law enforcement officers and, but for the language in Title 49, would clearly meet the definition at 18 U.S.C. § 926B(c), it is appropriate for these officers to be eligible for the benefits of LEOSA. For these reasons, S. 1132 expands the definitions in 18 U.S.C. §§ 926B and 926C to include the officers employed by the Amtrak Police Department.

Law enforcement officers employed by the Federal Reserve System are authorized at 12 U.S.C. § 248(q). They are required to complete training at the Federal Law Enforcement Training Center and are considered “fully sworn” officers of the Federal Government. The primary responsibility of these officers is the protection of the Federal Reserve facilities and its employees. Federal Reserve officers also engage in dignitary protection and operate Special Response Teams, hazardous material response teams, and K–9 teams. These facts reinforce the Committee’s belief that any ambiguity concerning the eligibility for benefits under 18 U.S.C. §§ 926B–926C for Federal Reserve law enforcement officers should be removed by explicit inclusion in the legislation.¹²

The bill also addresses two other issues that have unduly restricted retired officers from being eligible for the privileges conferred under LEOSA. The bill reduces the required years of service, from 15 to 10, which a retired officer must have served in order to be eligible for LEOSA certification. This amendment is responsive to the fact that some law enforcement officers enter the profession as a second career, often subsequent to military service.

The bill also removes the requirement in existing law that a retired officer be entitled to “non-forfeitable” retirement benefits.¹³ Some small State and local law enforcement agencies do not provide these benefits, and the Committee recognizes that this requirement has the potential effect of disqualifying otherwise eligible retired officers.

The legislation changes the term “retired” with “separated from service”. This change was made in order to ensure that law enforcement officers who had put in the requisite term of service were not denied benefits due to not being technically “retired”.

The legislation revises the provision in existing law related to the ineligibility of retired officers due to mental health issues. Under current law, a retired officer must have retired in good standing and for reasons unrelated to mental health.¹⁴ The legislation refines this requirement by giving law enforcement agencies two alternatives in making a determination about an officer’s eligibility for the benefits of the law in light of mental health issues: an officer shall be ineligible if a medical professional employed by the officer’s agency makes such a determination, and alternatively, the of-

¹¹ Bureau of Justice Statistics, BJS Bull. No. NCj212750, Federal Law Enforcement Officers, 2004 4 (2006), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fleo04.pdf>.

¹² The Committee notes that the specifically named Federal law enforcement agencies named in the legislation constitute a non-exhaustive list. For example, special police assigned to the National Zoological Park in Washington, D.C., who have statutory power of arrest, carry firearms, and complete training at the Federal Law Enforcement Training Center should, in the Committee’s view, be eligible for the benefits provided under 18 U.S.C. §§ 926B–926C.

¹³ 18 U.S.C. § 926C(c)(4).

¹⁴ 18 U.S.C. § 926C(c)(1).

ficer may enter an agreement with the employing agency acknowledging ineligibility for mental health reasons.

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

In 2004, Congress passed, and President George W. Bush signed into law, the Law Enforcement Officers Safety Act of 2003 (Pub. L. 108–277). The Senate version of that bill (S. 253) was co-sponsored by 70 Senators and was reported out of the Judiciary Committee on March 6, 2003 by a vote of 18–1. It was agreed to in the House of Representatives by a voice vote on June 23, 2004, and passed by unanimous consent in the Senate on July 7, 2004. The President signed the Law Enforcement Officers Safety Act of 2003 into law on June 22, 2004. The history of the Law Enforcement Officers Safety Act of 2003 is recounted in S. Rpt. 108–29.

In the 110th Congress on January 24, 2007, Chairman Leahy introduced S. 376, the Law Enforcement Officers Safety Act of 2007. Like S. 1132, S. 376 was intended to improve the existing law at 18 U.S.C. §§ 926B and 926C. Senate Bill 376 was favorably reported twice by the Senate Judiciary Committee in the 110th Congress: once on September 9, 2007, without amendment, and again on September 21, 2007, as part of S. 2084, the School Safety and Law Enforcement Improvements Act of 2007. The Senate took no further action on either of these bills.

Chairman Leahy introduced S. 1132 on May 21, 2009, and the bill was referred to the Senate Judiciary Committee. The bill was first listed on the Committee’s agenda on February 4, 2010. On March 11, 2010, the Committee met in open session and voted by voice vote to report the Law Enforcement Officers Safety Act Improvements Act of 2010, with an amendment in the nature of a substitute, to the Senate.

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1 designates the short title of the bill as the “Law Enforcement Officers Safety Act Improvements Act of 2010”.

Section 2(a)(1) amends 18 U.S.C. § 926B to add a qualifier to 926B(c)(3)’s requirements for eligibility under the law, such that the officer must not have been subject to disciplinary action that “could result in suspension or loss of police powers”.

Section 2(a)(2) makes explicit that active law enforcement officers employed by the Amtrak Police Department, the Federal Reserve, or who serve as law enforcement officers “of the executive branch of the Federal Government” are eligible for the law’s benefits.

Section 2(b) amends 18 U.S.C. § 926B(e) by clarifying the type of firearm and ammunition a qualified officer may carry under the law.

Section 2(c) amends 18 U.S.C. § 926C to replace the term “retired” with “separated from service”. Section 2(c) also reduces the requisite years of service for a qualified officer from 15 years to 10 years. The section also revises the qualification process for retired officers by permitting the firearms testing portion of the certification obtainable, where certification from a State law enforcement agency is not possible, from certified firearms instructor qualified by the State.

Section 2(c) also makes changes to the current law's provisions for disqualification from LEOSA certification due to mental health issues. The legislation would deny certification where 1) an officer had been found by a medical professional to be unqualified for LEOSA certification for mental health reasons; or 2) the officer entered into an agreement with his or her employing agency where the officer acknowledges that he or she is unqualified for reasons relating to mental health.

Finally, Section 2(c) makes explicit that retired law enforcement officers who were employed by the Amtrak Police Department, the Federal Reserve, or who served as law enforcement officers "of the executive branch of the Federal Government", and otherwise meet the law's requirements, are eligible for the law's benefits.

IV. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI, of the Standing Rules of the Senate, the Committee sets forth, with respect to the bill, S. 1132, the following estimate prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

MARCH 19, 2010.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1132, the Law Enforcement Officers Safety Act Improvements Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1132—Law Enforcement Officers Safety Act Improvements Act of 2010

Current federal law exempts certain active and retired law enforcement officers from most state and local laws prohibiting the carrying of concealed firearms. S. 1132 would clarify that officers of the Amtrak Police Department, the Federal Reserve, and the executive branch of the federal government would qualify as individuals who may carry concealed firearms. The bill also would change the requirements that retired officers must meet to carry concealed firearms.

CBO estimates that implementing the bill would result in no significant costs to the federal government. Enacting S. 1132 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

S. 1132 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would expand an existing mandate that preempts state or local laws prohibiting the carrying of concealed weapons. CBO estimates that the costs, if any, for state, local, or tribal governments to comply would be

insignificant and well below the annual threshold established in UMRA (\$70 million in 2010, adjusted annually for inflation).

S. 1132 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs) and Melissa Merrell (for the state and local impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 1132.

VI. CONCLUSION

In passing the Law Enforcement Officers Safety Act of 2003, the Senate recognized that law enforcement officers occupy a unique place in American society and should be entrusted with special privileges related to firearms. The bill the Committee reports in 111th Congress continues this recognition by making improvements to existing law necessary to ensure that qualified retired officers are able to gain the privileges and protections Congress originally intended in the Law Enforcement Officers Safety Act of 2003.

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1132, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

* * * * *

CHAPTER 44—FIREARMS

* * * * *

§ 926B. Carrying of concealed firearms by qualified law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that—

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term “qualified law enforcement officer” means an employee of a governmental agency who—

(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

(2) is authorized by the agency to carry a firearm;

(3) is not the subject of any disciplinary action by the agency *which could result in suspension or loss of police powers*;

(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

(5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(6) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer.

[(e) As used in this section, the term “firearm” does not include—

[(1) any machinegun (as defined in section 5845 of the National Firearms Act);

[(2) any firearm silencer (as defined in section 921 of this title); and

[(3) any destructive device (as defined in section 921 of this title).]

(e) *As used in this section, the term “firearm”—*

(1) except as provided in this subsection, has the same meaning as in section 921 of this title;

(2) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

(3) does not include—

(A) any machinegun (as defined in section 5845 of the National Firearms Act);

(B) any firearm silencer (as defined in section 921 of this title); and

(C) any destructive device (as defined in section 921 of this title).

(f) For the purposes of this section, a law enforcement officer of the Amtrak Police Department, a law enforcement officer of the Federal Reserve, or a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest.

§ 926C. Carrying of concealed firearms by qualified retired law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified

retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that—

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term [“qualified retired law enforcement officer”] *“separated from service”* means an individual who—

(1) retired in good standing from service with a public agency as a law enforcement officer[, other than for reasons of mental instability];

(2) before such [retirement] *separation*, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(3)(A) before such [retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more] *separation, served as a law enforcement officer for an aggregate of 10 years or more; or*

(B) [retired] *separated* from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) [has a nonforfeitable right to benefits under the retirement plan of the agency] *during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State; and;*

[(5) during the most recent 12-month period, has met, at the expense of the individual, the State’s standards for training and qualification for active law enforcement officers to carry firearms;] (5)(A) *has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in subsection (d)(1); or*

(B) *has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in subsection (d)(1);*

(6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is—

(1) a photographic identification issued by the agency from which the individual **【retired】** *separated* from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency **【to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm】** *to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or*

(2)(A) a photographic identification issued by the agency from which the individual **【retired】** *separated* from service as a law enforcement officer; and

(B) a certification issued by the State in which the individual resides **【that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.】** *or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State to have met—*

(I) the active duty standards for qualification in firearms training, as established by the State, to carry a firearm of the same type as the concealed firearm; or

(II) if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.

【(e) As used in this section, the term “firearm” does not include—

【(1) any machinegun (as defined in section 5845 of the National Firearms Act);

【(2) any firearm silencer (as defined in section 921 of this title); and

【(3) a destructive device (as defined in section 921 of this title).】

(e) As used in this section—

(1) the term “firearm”—

(A) except as provided in this paragraph, has the same meaning as in section 921 of this title;

(B) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

(C) does not include—

(i) any machinegun (as defined in section 5845 of the National Firearms Act);

(ii) any firearm silencer (as defined in section 921 of this title); and

(iii) any destructive device (as defined in section 921 of this title); and

(2) the term “service with a public agency as a law enforcement officer” includes service as a law enforcement officer of the Amtrak Police Department, service as a law enforcement officer of the Federal Reserve, or service as a law enforcement or police officer of the executive branch of the Federal Government.

