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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-21, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
FINAL ANALYSIS**

BILL #: CS/HB 1407 (PCB SA 02-14), 1ST ENG
RELATING TO: Capitol Security
SPONSOR(S): Council for Smarter Government, Committee on State Administration, Representative(s)
Brummer and Cantens

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 4 NAYS 0
- (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 11 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

This act transfers the Division of Capitol Police by a type one transfer from the Department of Management Services (DMS) to the Florida Department of Law Enforcement (FDLE) and creates the Capitol Police as a separate program within the FDLE. The Capitol Police is to serve the safety and security needs of both the legislative and executive branches of the state government. The Capitol Police is to secure and protect the occupants, visitors, and buildings of the Capitol Complex. The Capitol Complex comprises the Capitol, Historic Capitol, Senate Office Building, House Office Building, and the Knott, Pepper, and Holland buildings and the curtilage of each of these buildings, including the state-owned land and public streets adjacent to these buildings, and the Capitol Circle Office Complex in Leon County, Florida. The Capitol Police is to develop basic and enhanced security plans that provide for the security and protection of occupants and visitors to the Capitol Complex, subject to the approval of the Governor, President of the Senate, and Speaker of the House of Representatives. This act makes clear that the Capitol Police is to pay due deference in implementing any security plan to the execution of the constitutional duties of the Legislature and the authority of the presiding officers of the houses of the Legislature and the constitutional duties of the Governor and the members of the Cabinet.

The DMS is authorized to make provisions for security at other state-owned or state-leased buildings through rule, or contract or agreement; it is no longer a direct provider of security or policing services. However, the DMS is to transfer quarterly such funds necessary from office space rental receipts assessed against tenet agencies in buildings in the Florida Facilities Pool to the FDLE to operate the Capitol Police program.

The act directs the Office of Legislative Services to contract with an outside vendor for a security inventory however funding for this contact was not provided during the 2002 Regular Session.

The act is effective, except as otherwise provided therein, upon becoming a law, which was on April 11, 2002.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Capitol Police

The Department of Management Services (DMS) is the state agency that provides general infrastructure organization and central services for the more than two dozen executive departments and the three branches of state government. Its principal duties involve administration of employee personnel, health and retirement benefits; the functional ownership of many state buildings including all of those specified in the Florida Facilities Pool; and centralized procurement and property management. DMS also oversees state parking, vehicle management and facility security. The responsibility of facility security is discharged through Chapter 281, F.S., with asset protection and capitol-area employee security assigned to the Division of Capitol Police.

The division concentrates most of its patrol staffing in the state capital area by virtue of the requirements in Chapter 281, F.S., with a specific security presence in four named buildings: the Capitol, Historic Capitol, Senate Office Building, and House Office Building. It also has a staffing complement in multi-occupancy state office buildings in other cities outside Tallahassee.

After the events of September 2001, the DMS entered into a Memorandum of Agreement with the Department of Law Enforcement to operate the Capitol Police.

Type One Agency Transfers

A type one transfer, defined in s. 20.06(1), F.S., occurs when an agency or department is transferred intact to another agency or department so that the transferred agency becomes a unit of the recipient agency. Under this type of agency transfer, the records, personnel, property and balance of appropriations, allocations, or other funds of the transferred entity are transferred intact to the recipient agency. The administrative rules of the transferred entity remain in effect until specifically amended or repealed in the manner provided by law. Finally, s. 20.06, F.S., specifically provides that the transfer does not affect the validity any ongoing administrative or judicial proceedings involving the transferred agency and that the recipient agency be substituted as the party of record in judicial or administrative proceedings.

C. EFFECT OF PROPOSED CHANGES:

This act transfers the Division of Capitol Police by a type one transfer from the Department of Management Services (DMS) to the Florida Department of Law Enforcement (FDLE) and creates the Capitol Police as a separate program within the FDLE. The Capitol Police is to serve the safety and security needs of both the legislative and executive branches of the state government. The Capitol Police is to secure and protect the occupants, visitors, and buildings of the Capitol Complex. The Capitol Complex comprises the Capitol, Historic Capitol, Senate Office Building, House Office Building, and the Knott, Pepper, and Holland buildings and the curtilage of each of these buildings, including the state-owned land and public streets adjacent to these buildings, and the Capitol Circle Office Complex in Leon County, Florida. The Capitol Police is to develop basic and enhanced security plans that provide for the security and protection of occupants and visitors to the Capitol Complex, subject to the approval of the Governor, President of the Senate, and Speaker of the House of Representatives.

This act makes clear that the Capitol Police is to pay due deference in implementing the security plan to the execution of the constitutional duties of the Legislature and the authority of the presiding officers of the houses of the Legislature.

Effective July 1, 2002, the DMS is authorized to make provisions for security at other state-owned or state-leased buildings through rule, or contract or agreement. The department is no longer a direct provider of security or policing services.

This act directs the Office of Legislative Services to contract with an outside vendor for a security inventory; however, funding for this contact was not provided during the 2002 Regular Session.

This act provides that the DMS transfer quarterly to the FDLE such funds necessary to operate the Capitol Police program. These funds are drawn from office space rental receipts collected from tenet agencies in buildings in the Florida Facilities Pool.

This act is effective, except as otherwise provided, upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 20.201(2)(d), F.S., to establish the Capitol Police as a program within the Department of Law Enforcement (FDLE).

Section 2. Transfers by a type one transfer the powers, duties and functions related to the provision of security within the Capitol Complex (defined in sections 3 and 12, below) of the Division of Capitol Police, Department of Management Services, to the Capitol Police, Department of Law Enforcement. The powers, duties, and functions related to securing other state-owned or leased buildings and property remain with the Department of Management Services.

Section 3. Provides that the DMS transfer quarterly funds to the FDLE to operate the Capitol Police. These monies are derived from the office space rental receipts collected from tenant agencies in buildings in the Florida Facilities Pool. This pool is the main financing mechanism for construction of state-owned office buildings and facilities.

Section 4. Creates, effective July 1, 2002, s. 281.01, F.S., to define the Capitol Complex area which consists of the Capitol, Historic Capitol, Senate Office Building, House Office Building, and the Knott, Pepper, and Holland buildings and the curtilage of each of these buildings, including the state-owned land and public streets adjacent to these buildings, and the State Capitol Circle Office

Complex located in Leon County, Florida. The Emergency Operations Center (EOC) is located at the Capitol Circle Office Complex. According to the Department of Community Affairs, the EOC "is a facility that provides direction and coordination of emergency response and recovery efforts before, during and after times of impending or serious emergencies or disasters."

Section 5. Amends, effective July 1, 2002, s. 281.02, F.S., to revise the powers and duties of the DMS. It is no longer a direct provider of security or policing services; it is authorized to obtain such services as part of a leasing agreement or as a separate contract for such services.

Provides that the DMS:

- Must assist the State Fire Marshall in maintaining firesafety in public buildings;
- Make provision by rule, contract, lease or interagency agreement for the security of all state-owned property leased from the DMS, except for state universities and custodial institutions, the Capitol Complex, the Governor's Mansion and the grounds thereof, and the Supreme Court. The rules or agreements must include provisions for the safety and security of occupants of the buildings, for appropriate law enforcement response to criminal activities or security threats at the facilities, and for the development of emergency procedures and evacuation routes in the event of fire or other events and the communication of such procedures to building occupants;
- Employ guards and non-sworn administrative personnel;
- Train employees and make provision for the training of employees in security and emergency procedures;
- Make provision for the enforcement of parking and traffic regulation at state-owned or state-leased buildings and property; and
- May delegate or assign its duties and responsibilities for security to state agencies occupying publicly leased facilities but must include the security requirements in lease agreements or establish the security requirements by rule.

Section 6. Amends, effective July 1, 2002, s. 281.03, F.S., to provide that the DMS must make provision for the collection and retention of reports relating to criminal activity or other safety-related and security-related incidents occurring on state-owned or state-leased property for use in ongoing security planning and to fulfill its responsibilities pursuant to s. 281.02. F.S.

Section 7. Repeals, effective July 1, 2002, ss. 281.04, (arrest authority for the DMS, Florida Capitol Police) and 281.05, (authority to deputize other law enforcement officers as ex officio officers of the DMS, Florida Capitol Police) F.S.

Section 8. Amends s. 281.06, F.S., to authorize the Department of Management Services to contract with the FDLE Capitol Police, local public law enforcement agencies or licensed private security agencies to provide and maintain the security of state-owned or leased buildings or property. The authority to contract with the FDLE is temporary; it is effective until July 1, 2002, to allow for the continuation of a working agreement between the DMS and FDLE until the end of Fiscal Year 2001-2002.

Section 9. Amends, effective July 1, 2002, s. 281.06, F.S., to repeal authority provided the DMS to contract with the FDLE, because that department becomes responsible for security in the Capitol Complex on that date, eliminating the need for the DMS to maintain a contract with the FDLE for such services. The DMS continues to have authority to contract with local public law enforcement agencies or licensed private security agencies to provide and maintain the security of state-owned or leased buildings or property.

Section 10. Amends, effective July 1, 2002, s. 281.07, F.S., to remove authority provided the DMS to adopt rules governing administration, operation, and management of the Capitol Police and instead gives the DMS authority to adopt rules regulating parking and traffic in the Capitol Complex.

Section 11. Amends s. 281.08(1), F.S., to provide the DMS with the authority to acquire and dispose of equipment and other material necessary for the administration of ss. 281.02 -.08, F.S., as revised by this act.

Removes s. 281.08(2), F.S., which made it unlawful for an unauthorized person to wear the uniform or emblem of the Capitol Police. The Florida Criminal Code provides for penalties for falsely impersonating an officer.

Section 12. Creates s. 943.60, F.S., to define that the Capitol Complex consists of the Capitol, Historic Capitol, Senate Office Building, House Office Building, and the Knott, Pepper, and Holland buildings and the curtilage of each of these buildings, including the state-owned land and public streets adjacent to these buildings, and the State Capitol Circle Office Complex.

This language is identical to that which is found in s. 281.01, F.S., (section 4 of this act).

Section 13. Creates s. 943.601, F.S., to provide a statement preserving legislative powers when the application of the powers and duties of the Capitol Police would interfere with the constitutional duties of the Legislature.

Provides that nothing in the act limits the rights and powers of the Senate or House of Representatives or the officers of either body to direct or command the members or staff of the respective bodies to attend any meeting or enter any area of the Capitol Complex for legislative purposes. Also provides that the Capitol Police is to ensure the ability of members of the legislature to attend to legislative business without interference from any person or governmental entity.

Section 14. Creates s. 943.61, F.S., to provide for the creation of the Capitol Police, within the FDLE, its powers and duties, and limitations on those powers and duties.

Subsection 1. The Capitol Police is created within the FDLE and serves to ensure the safety and security of both the legislative and executive branches of state government.

This subsection also provides a statement of legislative intent that the Capitol Police is to serve as a specially trained and highly effective security force and law enforcement agency for the Capitol Complex.

The primary responsibility of the Capitol Police is to ensure the continued operation of the government of the state of Florida by ensuring the security of state-wide elected officials, legislative members, and the employees of these elected officers and by ensuring their access to buildings and premises within the Capitol Complex. Any other law enforcement activities are secondary to this primary responsibility.

Subsection 2. The Capitol Police is also authorized to provide security to other state officials, employees, and visitors to the Capitol Complex and to maintain a reasonable degree of security within the Capitol Complex while ensuring reasonable access to the Capitol Complex by all persons.

Subsection 3. No assets, personnel, or resources of the Capitol Police can be taken from the program and no appropriation to the program reduced without the express approval of the Governor

and the Legislative Budget Commission. The Capitol Police is authorized to enter into mutual aid pacts unless otherwise limited by the operational security plans created under this section.

Subsection 4. The Capitol Police has the following powers and duties:

Subsection 4a.

- To develop a written operational plan for basic and enhanced security measures and actions for the Capitol Complex, in consultation with the Governor, Cabinet Officers, the Senate President, and the Speaker of the House;
- To submit the plans and any amendments in writing to the Governor, President, and Speaker and not to implement these plans unless all three officers grant approval in writing. The approval of each officer expires 60 days after the approving officer vacates office. The written approval of the successor in office must be obtained for the continued operation of any plan;
- To activate an enhanced security plan only upon the request of the Governor, Cabinet officer, Speaker, or President and only for those offices occupied by the requesting officer; and
- To limit the use on an unapproved emergency plan only upon the declaration by the Governor of an emergency situation that threatens the safety and security of the occupants of the Capitol Complex and then for only 15 days, provided that the plan does not substantially interfere with the ability of the legislative bodies to assemble for any constitutional purpose.

Subsection 4b. The Capitol Police is to provide and maintain security for all property located in the Capitol Complex and consult with the State Fire Marshall regarding firesafety activities.

Subsection 4c. The Capitol Police is to develop incident reporting plans, emergency procedures, and evacuation routes in the event of fire, security threats, incidents prompting a need for evacuation, acts of terrorism, or other disasters and to communicate those plans, procedures and routes to the occupants of and visitors to the Capitol Complex.

Subsection 4d. The Capitol Police is authorized to employ sworn officers.

Subsection 4e. The Capitol Police is authorized to employ guards and other non-sworn personnel.

Subsection 4f. The Capitol Police is to train officers and other employees in fire prevention, firesafety, and emergency medical procedures.

Subsection 4g. The Capitol Police is authorized to respond to all complaints of criminal activity or security threats in the Capitol Complex or against a state-wide elected officer, legislative member, or an employee of one those elected officers.

Subsection 4h. Upon the request of the presiding officer of either house of the Legislature, the executive director of the Capitol Police is to assign officers to protect a legislative member. Provides for per diem and subsistence allowances pursuant to s. 112.061, F.S., for FDLE employees traveling with a legislative member outside of Tallahassee.

Subsection 4i. The Capitol Police is authorized to enforce DMS rules governing the regulation of traffic or parking within the Capitol Complex. The Capitol Police is also authorized to impound illegally or wrongfully parked vehicles.

Subsection 4j. The Capitol Police is authorized to adopt policies for its organizational structure, principles of command, and internal operations that are not inconsistent with the operational security plan.

Subsection 5. The sworn officers of the Capitol Police are authorized to make arrests consistent with the security plan developed pursuant to s. 943.61, F.S. However, officers of the Capitol Police are without the power to prevent any meeting of the Legislature, its staff or its committees without prior approval of the appropriate presiding officer, or to interfere with the constitutional duties or rights of the Governor or a member of the Cabinet except as necessary to protect the health and safety of any person from "a clear and present danger" or as provided in the operational safety plan.

Section 15. Creates s. 943.611, F.S., to provide for the appointment and responsibilities of the Director of the Capitol Police. Provides that the Executive Director of the FDLE is to nominate, at least 7 days prior to the organizational session of the Legislature, an individual to serve as Director of the Capitol Police. That person serves at the pleasure of the Executive Director of the FDLE. That person must be approved by both houses of the Legislature no later than 30 days after adjournment sine die of the next session of the Legislature in a manner determined by the presiding officer of each house or as otherwise provided for in the rules of the respective houses.

The director may be discharged but is to serve until a successor has been nominated or the time for re-appointment has expired. A nominee may serve as an acting director until the time for approval has expired.

Section 16. Creates s. 943.62, F.S., to provide that the Capitol Police may conduct traffic accident investigations and felony and misdemeanor investigations on state-owned or leased property. Any matter may be turned over to the FDLE's agents or inspectors or another appropriate law enforcement agency for further investigation. The Capitol Police must retain copies of all reports relating to such criminal activity for use in ongoing firesafety and security plan review activities.

Section 17. Creates s. 943.63, F.S., to authorize Capitol Police officers to arrest a person and deliver that person to the sheriff of the county in which the arrest takes place.

Section 18. Creates s. 943.64, F.S., to provide that State Troopers, Department of Law Enforcement agents and inspectors, and local public law enforcement officers are ex officio members of the Capitol Police and when authorized by the Capitol Police, may exercise the authority conferred upon the Capitol Police by ss. 943.61 - .68, F.S.

Section 19. Creates s. 943.66, F.S., to provide that the Capitol Police may enforce the DMS rules governing the Facilities Management Program and regulating traffic and parking on state-owned or leased buildings or property, if such rules are not in conflict with state law or county or municipal ordinances, and to carry out the provisions of ss. 43.61-.68, F.S. Additionally, counties and municipalities may enact and enforce ordinances on the violation of traffic and parking rules provided for herein.

Section 20. Creates s. 943.67, F.S., to provide that the Capitol Police has the authority to acquire and dispose of equipment and other material necessary for its operations. The FDLE may prescribe the uniform and emblem to be worn by the officers and other personnel of the Capitol Police.

Section 21. Section 281.20, F.S., is renumbered as s. 943.68, F.S. This section authorizes the Department of Law Enforcement to provide protective services to the Governor and his or her immediate family.

Section 22. Amends paragraph (c) of subsection (2) of s. 287.17, F.S., to conform to the renumbering of s. 281.20, F.S., to s. 943.58, F.S.

Section 23. Amends paragraph (g) of subsection (2) of s. 288.816, F.S., to conform to the renumbering of s. 281.20, F.S., to s. 943.68, F.S.

Section 24. Provides that the Office of Legislative Services is to contract with an outside vendor for a security inventory of facilities and personnel. This inventory will include information providing lists of the security options available; the proposed most efficient, cost-effective method of providing security; and any other items related to security that the Legislature should consider.

Section 25. Provides that the security inventory contract is contingent upon a specific appropriation in House Bill 1943 for such contract. House Bill 1943 was the 2002-2003 General Appropriations Act filed for the 2002 Regular Session but died *sine die*. If the security inventory contract is to be let, it should be addressed in proviso in any subsequent legislation that is to be the 2002-2003 General Appropriations Act

Section 26. Provides that except as otherwise provided, the act takes effect upon becoming a law, which was on April 11, 2002.

III. 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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The act directs that the Office of Legislative Services contract with an outside vendor for a security inventory, contingent upon funding being appropriated in the General Appropriations Act. This contingency did not occur during the 2002 Regular Session.

D. FISCAL COMMENTS:

Budget materials submitted for Fiscal Year 2003-2004 by the Department of Management Services indicate that the Division of Capitol Police currently has a force of 141.5 FTE's and an annual budget of \$6.2 million, about 95 percent of which is derived from state trust funds. Most of the trust amount is attributable to a square foot charge each agency pays in its lease payments for security services.

The 141.5 FTE's are assigned to the following functions:

- Policing state facilities, 119.5 FTE's;
- Criminal investigations, 3 FTE's;
- Criminal and fire prevention training, 4 FTE's;
- Executive direction, 7 FTE's; and
- Maintenance of the communications center, 8 FTE's.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This act provides the FDLE adopt rules to administer the Capitol Police program. The DMS is authorized to adopt rules regarding the provision of security and policing services for state-owned facilities other than those in the Capitol Complex.

C. OTHER COMMENTS:

Collective Bargaining Units

The affected employees in the DMS are represented by different collective bargaining organizations. The officers are represented by the International Union of Police Associations while the remainder are represented by the American Federation of State, County, and Municipal Employees. Due to the fact that the DMS officer personnel are not considered "special agents" they will not be incorporated within the FDLE collective bargaining unit of that name which is now

represented by the Police Benevolent Association. The state's bargaining representative indicates that because the Governor remains the employer of the transferred officers, for purposes of collective bargaining, there does not necessarily need to be any additional impact bargaining at the time of the transfer.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its January 24, 2002, meeting, the Committee on State Administration adopted four amendments and reported the PCB favorably. The four amendments:

- Provide that for purposes of s. 281.02, F.S., which creates the State Security Force, the term "state-owned or state-leased buildings or property" shall not include state universities, the Capitol Complex, custodial institutions, the Governor's Mansion, and the Supreme Court;
- Remove an inadvertent reference to the agents and inspectors of the Department of Law Enforcement; and
- Move, within s. 943.61, F.S., which creates the Capitol Police, limitations on the powers of the Service from a paragraph providing for a statement of legislative intent to separate subsections within that section in order to effectuate those limitations.

At its February 14, 2002, meeting, the Council for Smarter Government adopted a strike-everything amendment and reported the bill favorably as a council substitute. The significant difference is that the Department of Management Services no longer is a direct provider of security or police services; it may make provision for these services through rule, contract or agreement. Several elements of the agreement between House leadership, the Governor's Office and the Department of Law Enforcement were inadvertently left out of this amendment. However, the sponsor filed an amendment for consideration by the House when the bill became available on the calendar.

The House of Representatives adopted a strike-everything amendment on March 14, 2002. This amendment included several elements of the agreement between the House leadership, the Governor's Office and the Department of Law Enforcement not included in the council substitute as well as refinements to the bill adopted by the Senate Criminal Justice Committee on March 12, 2002, in its consideration of the Senate companion, CS/CS/SB 1144.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

David M. Greenbaum

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AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

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DATE: April 30, 2002

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

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