

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1144

SPONSOR: Criminal Justice Committee, Governmental Oversight and Productivity Committee and Senator Garcia

SUBJECT: Governmental Organization

DATE: March 13, 2002                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Wilson	GO	Favorable/CS
2.	Erickson	Cannon	CJ	Favorable/CS
3.	_____	_____	APJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

**I. Summary:**

The CS provides an intact transfer, or Type One transfer, of the Capitol Police in the Department of Management Services (DMS) to the Florida Department of Law Enforcement (FDLE). The bill further provides for the development of basic and enhanced security plans for named buildings in the Capitol Complex.

The CS amends ss. 20.201, 281.02, 281.03, 281.06, 281.07, 281.08, 287.17, and 281.816, F.S.; repeals ss. 281.4 and 281.05, F.S., and creates ss. 281.01, 943.601, 943.61, 943.611, 943.62, 943.63, 943.64, 943.66, and 943.67, F.S., and several unnumbered sections of the Florida law; and rennumbers and amends s. 281.20, F.S.

**II. Present Situation:**

The 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; centralized procurement and property management, and the operation of a statewide telecommunications voice and data transmission network. The agency also oversees state parking vehicle management and facility security. It discharges this latter responsibility through ch. 281, F.S., and assigns asset protection and Capitol-area employee security to its Division of Capitol Police.

The division concentrates most of its patrol staffing in the state capital area by virtue of the requirements in ch. 281, F.S., with a specific security presence in five named buildings:

Governor's Mansion, Capitol, Historic Capitol, Senate, and House of Representatives. It also has a staffing complement in multi-occupancy state office buildings in other cities outside the capital. About one-half of occupied state agency office space is in leased premises and division presence is not as intense in such situations. Chapter 281, F.S., provides that the division may procure by contract supplemental services in such circumstances. As a practical matter, state agencies procure supplemental security services, as needed using their own budgeted funds. Even in the state capital area the actual deployment is concentrated more heavily in facilities in the Florida Facilities Pool, a bond funding mechanism for state agency office space. The pool, however, contains no covenants requiring a security presence.

Following the terrorist attacks of September 11, 2001, the Governor signed an Executive Order transferring the supervision of the division to the Florida Department of Law Enforcement.

### III. Effect of Proposed Changes:

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

**Section 2** provides for an intact transfer, or Type One transfer, of the Capitol Police in the Department of Management Services (DMS) to FDLE.

**Section 3** creates s. 281.01, F.S., to define the Capitol Complex area, to include 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 lands and public streets adjacent to these buildings, and the State Capitol Circle Office Complex. This section is effective July 1, 2002.

**Section 4** amends s. 281.02, F.S., to revise the powers and duties of DMS with respect to firesafety and security, so that DMS is no longer a direct provider of security or policing services, but is authorized to obtain such services as part of a leasing agreement or as a separate contract for such services. This section is effective July 1, 2002.

DMS must assist the State Fire Marshall in maintaining the firesafety in public buildings.

DMS must also make provision by rule, contract, lease, or interagency agreement for the security of all state-owned property leased from DMS, except for state universities and custodial institutions, the Capitol Complex, the Governor's Mansion and the grounds thereof, and the Supreme Court. Security must include the safety and security of occupants and visitors to state-owned property and appropriate law enforcement response to complaints relating to criminal activity or security threats, the development of emergency procedures and evacuations routes in the event of fire or disaster, and ensuring that occupants of such property know procedures and routes.

DMS must also employ guards and administrative, clerical, technical and other personnel.

DMS must also train employees and make provision for the training of agents, guards, and employees in security and emergency procedures.

DMS must also make provision for the enforcement of parking and traffic rules on state-owned property.

DMS must also delegate or assign its duties and responsibilities for security to state agencies occupying state-owned property. Security requirements may be included in lease agreements or established by DMS' rule.

**Section 5** amends s. 281.03, F.S., to provide that 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 property for use in ongoing security planning and to fulfill its responsibilities under s. 281.02, F.S. This section is effective July 1, 2002.

**Section 6** repeals ss. 281.04 and 281.05, F.S. This section is effective July 1, 2002.

**Section 7** amends s. 281.06, F.S., to authorize DMS to contract with (FDLE) Capitol Police, any county, municipality, or licensed private security agency to provide and maintain the security of state-owned property.

**Section 8** amends s. 281.07, F.S., as amended by the bill, to authorize DMS to contract with any county, municipality, or licensed private security agency to provide and maintain the security of state-owned property, and the safety and security of occupants and visitors thereof. This section is effective July 1, 2002.

**Section 9** removes DMS' authority to adopt rules governing administration, operation, and management of the Capitol Police, and specifies that its traffic and parking rules include the Capitol Complex. This section is effective July 1, 2002.

**Section 10** amends s. 281.08, F.S., to provide that DMS is authorized to purchase, sell, trade, rent, lease, and maintain all necessary equipment, motor vehicles, communication systems, housing facilities, and office space, and perform any other acts necessary for the proper administration of ss. 281.02-281.08, F.S. The section strikes 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 11** creates s. 943.60, F.S., to define the Capitol Complex area, to include 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 lands 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 3 of the CS).

**Section 12** creates s. 943.601, F.S., to provide a statement that, except as agreed to by the presiding officers of both houses of the Legislature, nothing in ch. 943, F.S., limits or otherwise interferes with rights and powers of those houses or their officers to direct or command their members, committees or staff to attend any meeting or enter any area of the Capitol Complex for a legislative purpose. The Capitol Police may, as developed and approved in the statutorily-outlined security plans, and upon request of the presiding officer of either house, ensure the

ability of any member of the requesting house to attend to such legislative business without wrongful interference from any person or governmental entity.

**Section 13** creates s. 943.61, F.S., which creates the Capitol Police within FDLE, to serve the safety and security needs of the legislative and executive branches. The Legislature intends that the Capitol Police serve as a specially trained and highly effective security and law enforcement agency serving the Capitol Complex. The primary responsibility of the Capitol Police is to protect the security of the Governor, the Lieutenant Governor, the Cabinet, the members of the Legislature, and staff assigned to assist them in performance of their official duties, and to ensure their access to buildings and premises within the Capitol Complex so as to provide for the continued operation of the government of the State of Florida. Provision of other law enforcement services and protection of property are secondary responsibilities.

Capitol Police must also provide security and protection for other state officials, employees and visitors to the Capitol Complex and maintain a reasonable degree of safety within the Capitol Complex while ensuring reasonable access to buildings and premises within by these persons. The Capitol Police must also ensure adequate signs and personnel are in place to inform and assist occupants of and visitors to buildings within the Capitol Complex.

Notwithstanding ch. 216, F.S., no assets, personnel, or resources are to be taken from the Capitol Police, nor are its appropriations to be reduced without the express approval of the Governor and the Legislative Budget Commission. Nothing in the section limits the ability of the Capitol Police to provide mutual aid to other law enforcement agencies as authorized by law unless such limitation is expressly included in the operational security plans, as provided.

Capitol Police must develop, in consultation with the Governor, Cabinet officers, the Senate President and the House Speaker, written operational plans for basic and enhanced security measures and actions for the Capitol Complex. These plans and amendments thereto must not be implemented unless presented in written final form to the Governor, the Senate President, and the House Speaker, and all three grant their written approval. The approval of any of these officers expires 60 days after the officer vacates office. Written approval of the officer's successor must be obtained prior to the continuation of operations under such plans. Upon the request of the Governor, a Cabinet officer, the Senate President, or the House Speaker, the Capitol Police must activate previously approved security measures and actions in accordance with the approved operational plans specific to the requesting officer's responsibilities and to the facilities occupied by such officer and the officer's staff. Upon an emergency threatening the immediate safety and security of Capitol Complex occupants, so declared by the Governor, unapproved plans may be implemented for not more than 15 days, provided such plans do not substantially interfere with the ability of the houses to assemble for any constitutional purpose.

Capitol Police must also provide and maintain security for all property located in the Capitol Complex in a manner consistent with the approved security plans and, in consultation with the State Fire Marshal, provide for evacuations, information, and training required for firesafety on such property in a manner consistent with s. 633.085, F.S.

Capitol Police must also develop plans for reporting incidents involving buildings and property within the Capitol Complex, emergency procedures and evacuation routes in the event of fire,

security threats, incidents prompting a need for evacuation, acts of terrorism, or natural or manmade disaster and make such procedures and routes known to occupants of such buildings.

Capitol Police must also employ certified law enforcement officers who have the authority to bear arms, make arrests, except as may be limited in the approved security plans, and apply for arrest warrants.

Capitol Police must also hire guards, and administrative, clerical, technical, and other personnel.

Capitol Police must also train all officers and other employees in fire prevention, firesafety, emergency medical procedures, and preventing and responding to acts of terrorism.

Capitol Police must also respond to all complaints relating to criminal activity or security threats in the Capitol Complex, or against the Governor, the Lieutenant Governor, a Cabinet member, a member of either house, or the official's staff.

As provided by the approved security plans, upon request of the presiding officer of either house, the director of the Capitol Police may assign one or more officers to protect a member in the house of the requesting presiding officer. Per diem and subsistence allowances for FDLE employees traveling with a legislative member outside of Tallahassee are computed by payment of a sum up to the amounts permitted in s. 112.061, F.S., for meals, plus actual expenses for lodging to be substantiated by paid bills therefore.

Capitol Police must also enforce DMS' rules governing the regulation of traffic or parking within the Capitol Complex and impound illegally or wrongfully parked vehicles.

Capitol Police must also adopt policies for its organizational structure, principles of command, and internal operations that are not inconsistent with ss. 943.61-943.68, F.S., or approved security plans.

Officers of the Capitol Police may make lawful arrests, consistent with the purposes, responsibilities, and limitations set forth in ss. 943.60-943.68, F.S. However, except with the prior approval of the appropriate presiding officer, officers of the Capitol Police have no power to prevent the convening or continuation of any meeting of the Legislature, or to interfere with the constitutional duties or rights of the Governor or a Cabinet member, except as may be necessary to protect the health and safety of any person from a clear and present danger, or as otherwise may be provided in the approved security plans for fire prevention, firesafety, and emergency medical procedures. No employee of the Capitol Police is permitted in either legislative chamber without the specific permission of the presiding officer of that chamber, but may enter in the case of an emergency when the presiding officer is not able or not available to consent.

**Section 14** creates s. 943.611, F.S., to provide for the appointment and responsibilities of the director of the Capitol Police. The executive director of FDLE must nominate, no later than 7 days prior to the organizational session of the Legislature, an individual to serve as the director of the Capitol Police, who serves at the pleasure of the executive director of FDLE. Unless discharged by the executive director of FDLE, the director serves until a successor has been

nominated or the director has been nominated for reappointment and the time for obtaining reapproval has expired.

In the event that a nominee is not approved or the executive director of FDLE discharges the director, or the position is otherwise vacant, a successor is to be nominated. No person who has been previously nominated and who failed to obtain approval can be nominated to serve as the successor.

This nominee (or a nominee nominated by the executive director no later than 7 days prior to organizational session) must be approved no later than 30 days after the adjournment sine die of the next session of the Legislature, whether organization, regular, or special session, by the Governor and by the House and Senate, in a manner determined by the presiding officer of each house unless an approval process is otherwise provided for in the rules of the respective house. A nominee serves as the acting director until the time for obtaining approval has expired.

**Section 15** creates s. 943.62, F.S., to provide that the Capitol Police must conduct traffic accident investigations and felony and misdemeanor investigations occurring within the Capitol Complex. Any matters may be turned over to FDLE's agents or inspectors or another appropriate law enforcement agency for further investigation. Such referrals must include transmittal of records, reports, statements, and all other information relating to such matters. Capitol Police must also retain copies of all reports relating to such criminal activity for use in the ongoing firesafety and security plan.

**Section 16** creates s. 943.63, F.S., to provide that a person arrested by an officer of the Capitol Police must be delivered to the sheriff of the county in which the arrest takes place unless a notice to appear is issued.

**Section 17** creates s. 943.64, F.S., providing that law enforcement officers of the Department of Highway Safety and Motor Vehicles, special agents or inspectors of FDLE, and law enforcement officers of other state agencies, counties, and municipalities are ex officio agents of the Capitol Police, and may, when authorized by the Capitol Police, enforce rules and laws applicable to the powers and duties of the Capitol Police to provide and maintain security.

**Section 18** creates s. 943.66, F.S., to provide that the Capitol Police may enforce DMS rules governing the Facilities Management Program and regulating traffic and parking on state-owned 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. 943.61-.943.68, F.S.

**Section 19** creates s. 943.67, to provide that the Capitol Police are authorized to purchase, sell, trade, rent, lease, and maintain all necessary equipment, uniforms, motor vehicles, communication systems, housing facilities, and office space, and perform any other acts necessary for the proper administration of ss. 943.61-943.68, F.S. FDLE may prescribe a distinctive uniform for the Capitol Police and a distinctive emblem for all officers or guards of the Capitol Police.

**Section 20** renumbers s. 281.20, F.S., as s. 943.68, F.S., and amends that statute to authorize FDLE to provide protective services to the Governor and his immediate family, and the Governor's office and mansion and the grounds thereof.

**Section 21** 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 22** 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 23** creates an unnumbered section of the Florida law to provide 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 24** creates an unnumbered section of the Florida law that provides that the security inventory contract provided for in Section 23 is contingent upon specific funding being appropriated in HB 1943 for such contract.

**Section 25** provides that, except as otherwise provided in the act, the act takes effect upon becoming a law.

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

##### **A. Municipality/County Mandates Restrictions:**

Chapter 281, F.S., gives the division the ability to negotiate enforcement agreements with units of local government. That authority would transfer to the successor organization.

##### **B. Public Records/Open Meetings Issues:**

The transfer of security confidentiality from DMS to FDLE is done horizontally and does not further restrict public access or close records. Capitol Police is already a law enforcement agency.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The lease expense to a state agency tenant in a facilities pool building includes a security assessment slightly in excess of \$1.00 per square foot. Any subsequent decision to seek a lump sum appropriation for security operations that is separate from this square foot assessment will make state buildings more attractive for agencies now in privately leased locations. This could force either a renegotiation of the lease over a different term to the advantage of the state agency tenant or the invocation of the exclusive right to cancel the lease with six months prior notice should a state agency seek to relocate to a less expensive state facility location with available space. The right to cancel a lease in such circumstances, along with a cancellation right subject to appropriated funds, is a standard condition in each state lease agreement.

**C. Government Sector Impact:**

The CS provides for an intact transfer of the current division along with its appropriations pursuant to s. 20.06, F.S. The successor organization retains the right to review each of the transferred employees for employment subject to adherence to its own employment criteria. Those not qualified would be subject to dismissal, or presumably, be afforded other employment opportunities outside of their current employment field.

The DMS division has a force of 141.5 FTEs 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. Policing state facilities obligates 119.5 of the FTEs. Three positions are assigned to criminal investigations, 4 FTEs to criminal and fire prevention training, 7 FTEs to executive direction, and the remaining 8 FTEs to maintenance of the communications center.

Depending upon how the cost of security operations post-transfer is to be financially recognized there could be some impact upon the indirect cost recovery attributable to federal programs. These financial considerations exist separate and apart from the decision to transfer Capitol Police from one agency to another. The present method of assessing a per square foot charge for security as part of debt service on the capitol facilities pool distributes these costs across all building occupants. For agencies with large billable amounts of federal or state trust fund reimbursement the net general revenue cost per occupied square foot is minimal as the debt service is, for all intents and purposes, underwritten by the granting agency or specified trust fund. The bond covenants do not require a security component, only a financial coverage provision providing reserves in defined financial circumstances. A lump sum appropriation, should that be chosen, would require some form of charge back to security posts that are building specific and would change how indirect costs are assessed for recovery purposes.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The affected employees in the DMS are represented by different collective bargaining organizations. The division sworn officers are represented by the International Union of Police Associations while the American Federation of State, County, and Municipal Employees represent the remaining non-sworn agents. Because the DMS officer personnel are not considered “special agents” they will not be incorporated with the FLDE collective bargaining unit of that name now represented by the Police Benevolent Association. The FDLE will have to engage in impact bargaining following transfer to adhere to any contractual rights the affected employees may wish to assert under the labor agreement then in effect.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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