

STORAGE NAME: h0727.sec.doc

DATE: January 16, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
SECURITY, SELECT
ANALYSIS**

BILL #: HB 727 (PCB SEC 02-05)

RELATING TO: Domestic Security

SPONSOR(S): Select Committee on Security and Representative(s) Goodlette & others

TIED BILL(S):

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

- (1) SECURITY, SELECT YEAS 9 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The State Emergency Management Act provides for the coordination of activities relating to emergency preparedness, response, and recovery including natural, technological, and man-made disasters that threaten the life, health, and safety of the people of Florida. For purposes of emergency management, this bill expands legislative findings to include acts of terrorism within or affecting the state of Florida.

The bill defines the term "terrorism" as an activity that involves a violent act or an act dangerous to human life that is a violation of state or federal criminal laws or section 815.06, F.S., and is an act that appears to be intended to: a) intimidate, injure, or coerce a civilian population; b) influence the policy of a government by intimidation or coercion; or c) affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

The bill specifies the duties of the Florida Department of Law Enforcement (FDLE) with regard to counterterrorism efforts, responses to acts of terrorism and other domestic security matters. It provides for the executive director of FDLE, or his appointee, to serve as the Chief of Florida Domestic Security Initiatives and sets forth duties of the chief.

The bill establishes Regional Domestic Security Task Forces in each of the FDLE's seven operational regions to serve as advisors to the department and the Chief of Florida Domestic Security Initiatives. The bill establishes the goals and objectives of the task forces and provides for equipment, training and funding recommendations by the task forces. The bill requires the task forces to work to assure that hate-driven acts resulting from acts of terrorism are appropriately investigated.

The bill provides for a Counterterrorism Intelligence Center and a Domestic Security and Counterterrorism Database within the FDLE to gather, document, and analyze criminal intelligence and criminal investigative information related to terrorism and extremist groups.

The bill is effective upon becoming a law.

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"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

Emergency Management

The State Emergency Management Act is set forth under chapter 252, Florida Statutes. This act establishes the Division of Emergency Management (DEM) to ensure that Florida is prepared to respond to, recover from, and mitigate against the impact of emergencies, including natural, technological, and man-made disasters. The DEM works in coordination with federal, state, and local governments, interstate organizations, and the private sector to protect the people and property of Florida.

The act sets forth emergency management powers of the Governor, the Division of Emergency Management, counties and municipalities, and the Comptroller. Section 252.36, F.S., provides for the Governor to issue executive orders, proclamations, and rules and to amend or rescind them. Such executive orders, proclamations, and rules have the force and effect of law. This section gives the Governor power to declare a state of emergency by executive order or proclamation and to terminate it. A state of emergency may not exceed 60 days unless renewed by the Governor. The Legislature may terminate a state of emergency at any time by concurrent resolution.

After the terrorist attacks on the United States on September 11, 2001, Governor Bush declared a state of emergency and directed the Florida Department of Law Enforcement (FDLE) and the Florida Division of Emergency Management (DEM) to assess Florida's capability to prevent, mitigate, and respond to a terrorist attack. Under the State plan, FDLE is the lead agency for crisis management and DEM is the lead agency for consequence management. For purposes of the assessment, primary workgroups were formed around the state's existing emergency support functions: Emergency Services, Human Services, Critical Infrastructure, and Public Information and Awareness. These workgroups collected information about Florida's existing capabilities and capacities and identified areas in which the state's preparedness could be enhanced. Primary recommendations for strengthening Florida's anti-terrorism preparedness were outlined in the report *Assessing Florida's Anti-Terrorism Capabilities*.

Based on the recommendations in the assessment, on October 11, 2001, the Governor issued Executive Order 01-300 relating to domestic security. Under this Executive Order, the Governor directed that certain actions be taken immediately, or when necessary, upon legislative approval of funding. Those actions relating to FDLE as directed under Sections One and Three of the Governor's Executive Order will be implemented with the passage of this legislation.

Terrorism

Currently under state law, there is no definition for the term "terrorism." Federal law, under Title 18 USC § 2331(5), defines domestic terrorism to mean activities that:

- (A) Involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
- (B) Appear to be intended -
 - (i) To intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (C) Occur primarily within the territorial jurisdiction of the United States.

Florida Department of Law Enforcement

FDLE provides services in partnership with local, state, and federal criminal justice agencies to prevent, investigate, and solve crimes. FDLE is responsible for the delivery of investigative, forensic, and information services to Florida's criminal justice community. Investigative authority provided under s. 943.04(2), F.S. gives the department authority to investigate violations of any of the criminal laws of the state and to engage in other investigative activities that will aid local law enforcement in preventing or solving crimes and controlling criminal activity.

FDLE provides investigative and technical assistance to local law enforcement agencies through field investigations of major criminals and their organizations and identifies and investigates organized, multijurisdictional violations of Florida law. As part of its investigative function, FDLE provides for the collection, analysis, and dissemination of strategic criminal intelligence information. Criminal intelligence is gathered to identify targets, patterns of criminal activity, and emerging criminal organizations. The department works with local, state, and federal agencies to monitor: violent crime, disruptive groups and domestic terrorism; fraud and economic crime; and narcotics trafficking. FDLE has developed automated intelligence and investigative databases and provides database access to the criminal justice community through the Criminal Justice Network.

In performing its information services duties, FDLE manages and maintains the Criminal Justice Network. This intraagency network gives the state's criminal justice agencies access to criminal history information, criminal intelligence and investigative information, and other criminal justice data. The network operates in compliance with criminal justice definitions provided in s. 943.045, F.S., which defines the following terms:

- "Criminal intelligence information" means information collected by a criminal justice agency with respect to an identifiable person or group in an effort to anticipate, prevent, or monitor possible criminal activity.
- "Criminal investigative information" means information about an identifiable person or group, compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific criminal act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators, informants, or any type of surveillance.

A federal guideline for the operation of criminal intelligence systems is provided under 28 Code of Federal Regulations (CFR) Part 23. This guideline contains implementing standards for operating federally grant-funded multijurisdictional criminal intelligence systems. It specifically provides guidance in five primary areas: submission and entry of criminal intelligence information, security,

inquiry, dissemination, and review and purge process. Although this guideline applies specifically to *federally funded* intelligence systems, as a matter of policy, law enforcement agencies may opt to voluntarily comply with these standards in the development and operation of intelligence-sharing systems.

Public Records Law

Florida's public policy regarding access to government records is addressed in Article I, s. 24(a) of the Florida Constitution. Article I, s. 24(c), Florida Constitution, permits the Legislature to provide, by general law, for the exemption of records from the requirements of s. 24. Public records policy and exemptions are addressed in chapter 119, Florida Statutes, which provides definitions of criminal justice terms, including "active" criminal intelligence information and "active" criminal investigative information as follows:

- Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
- Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation that is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

Section 119.07(3)(b), F.S. provides that active criminal intelligence information and active criminal investigative information are exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Article I of the Florida Constitution.

Mutual Aid

The Florida Mutual Aid Plan is established under section 23.1231, F.S., and provides for the coordination of state and local law enforcement responses during natural and manmade disasters and emergencies. The Florida Mutual Aid Plan is administered by FDLE, and the department's commissioner serves as the director of the plan. By virtue of his role as director, the Commissioner of FDLE was authorized under Executive Order 01-300 to serve as, or appoint another member of the department to serve as, Chief of Florida Domestic Security Initiatives to collect, coordinate, and prioritize recommended domestic security efforts in Florida.

C. EFFECT OF PROPOSED CHANGES:

This legislation, in part, implements provisions of Executive Order # 01-300. The bill:

Section 1: Amends s. 252.311, F.S., to expand the State Emergency Act to include acts of terrorism. Provides findings relating to counterterrorism efforts and responses that require specialized efforts of emergency management, and provides that such efforts should be coordinated by and through the Florida Department of Law Enforcement, working closely with the Division of Emergency Management.

Section 2: Creates Section 775.30, F.S., to define terrorism as an activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of Florida or of the U.S. or involves a violation of the Florida Computer Crimes Act and is intended to intimidate, injure, or coerce a civilian population; influence the policy of a government by intimidation or coercion; or affect the conduct of government through the destruction of property, assassination, murder, kidnapping, or aircraft piracy.

Section 3: Adds subsection (14) to s. 943.03, F.S., to provide for the executive director of FDLE or his designee to serve as the Chief of Florida Domestic Security Initiatives to direct and coordinate the counterterrorism efforts and terrorism responses of all agencies involved in the preparation against and response to acts of terrorism.

Section 4: Creates s. 943.0311, F.S., to provide for a Chief of Florida Domestic Security Initiatives within the FDLE, provides the duties of the chief, and requires the chief to use the Regional Domestic Security Task Forces to support FDLE's role in domestic security initiatives. This section provides for the chief to conduct specific security assessments of buildings and facilities and to make recommendations for minimum security standards or security enhancements to the Governor and the Legislature. It provides for the coordination of FDLE's collection of proposals from public agencies, the private sector, and volunteer organizations involved in domestic security assessment preparations. The bill provides for annual reporting on domestic security to the Governor and Legislature by November 1 of each year, and requires that funding priorities be clearly identified in the report.

Section 5: Creates s. 943.0312, F.S., to provide for the creation of Regional Domestic Security Task Forces in FDLE's seven operational regions to address preparation and response efforts for dealing with potential or actual terrorist acts. This section provides for FDLE to provide employee support for each task force, subject to an annual appropriation. The bill designates that each task force will be co-chaired by a regional director of FDLE and a local sheriff or police chief. It also establishes membership of each task force to include representatives from the DEM, the Department of Health, state and local law enforcement, fire and rescue or first responder personnel, and others as deemed appropriate.

This section also sets forth the goals of each task force to include: coordination of federal, state, and local resources; coordination of the collection and dissemination of investigative and intelligence information; and facilitation of responses to terrorist incidents. It provides for the establishment of training standards for law enforcement officers, fire and emergency personnel, and first responder service personnel. Each task force must work to assure that hate-driven acts against ethnic groups as a result of terrorism are appropriately investigated.

Section 6: Creates s. 943.0321, F.S., to create the Florida Domestic Security Counterterrorism Intelligence Center and database within the FDLE to gather, document, and analyze intelligence and criminal investigative information about terrorist and extremist groups that will be available to law enforcement agencies and prosecutors. The bill provides for the database to be maintained by FDLE and identifies specific capabilities of the database. It provides for all information in the possession of the intelligence center that is exempt from public disclosure under chapter 119, F.S., to retain that exemption when the information is revealed to a federal, state or local law enforcement agency or prosecutor. It further provides that information obtained by the intelligence center from a federal, state, or local law enforcement agency or prosecutor that is exempt from public disclosure under state or federal law retains its exemption after such information is revealed to the intelligence center.

Section 7: This act shall take effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This legislation, providing appropriations and reductions in appropriations for the 2001-2002 Fiscal Year, contains the following provisions:

- FDLE Regional Anti-Terrorism Task Forces - 30 positions and \$1,799,571 from the General Revenue Fund.
- Terrorist Intelligence Database – 5 positions and \$200,429 from the General Revenue Fund; \$300,000 from the Grants and Donations Trust Fund.
- Responder and Incident Training - \$2,000,000 from the Criminal Justice Standards and Training Trust Fund.
- Critical Infrastructure Security Assessment and Standards - \$500,000 from the Grants and Donations Trust Fund.
- Domestic Preparedness Program/Equipment - \$9,000,000 from the Grants and Donations Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments will incur expenditures for the salaries and benefits, and any associated overtime costs for affected employees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill 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:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON SECURITY, SELECT:

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