

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1715 PCB DS 05-01 Domestic Security Oversight Council Codification
SPONSOR(S): Domestic Security Committee, Adams
TIED BILLS: HB 1801 **IDEN./SIM. BILLS:** SB 1414, SB 2000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Domestic Security Committee</u>	<u>7 Y, 0 N</u>	<u>Garner</u>	<u>Newton</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Dobbs</u>	<u>Belcher</u>
3) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
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SUMMARY ANALYSIS

The bill makes a number of revisions to the domestic security framework of the state, and changes the way certain domestic security activities are to be carried out. Specifically, the bill:

- Establishes legislative findings regarding the need to coordinate counterterrorism efforts and responses with the state comprehensive emergency management plan;
- Changes the name of the Chief of Domestic Security Initiatives to the Chief of Domestic Security;
- Amends the procedures for conducting security assessments of state facilities, requiring agencies to utilize instruments and methods provided by the Chief of Domestic Security when conducting and reporting assessments; Requires agencies, rather than the Chief, to establish security priorities;
- Authorizes the Chief of Domestic Security to utilize assessments made by local governments and water management districts when he or she makes recommendations to the Governor and Legislature about specific security enhancements;
- Authorizes the Chief of Domestic Security, with the assistance of the State Fire Marshal, to work directly with agencies and state entities to develop and implement best practices for security and safety of facilities;
- Requires regional domestic security task forces (RDSTFs) to provide support to the Department of Law Enforcement in its performance of functions pertaining to domestic security;
- Revises the list of entities that may participate on an RDSTF to emphasize the importance of participation by those in the healthcare and hospital industry, and to provide greater local control over membership;
- Authorizes RDSTFs to create subcommittees for the various disciplines and to provide for chairs of those subcommittees;
- Requires coordinating activities of the RDSTFs to be done in accordance with the state's strategic domestic security goals;
- Creates the Domestic Security Oversight Council, provides for its membership, structure, general governance, and duties;
- Defines the council as a "criminal justice agency" within the meaning of Ch. 119, F.S., for the purpose of protecting certain criminal justice investigative and intelligence information.

The bill is not expected to have a significant fiscal impact on state or local governments.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

Although the bill creates a new advisory council in general law, it merely codifies a governmental structure that exists in practice. The bill does not require additional personnel.

Maintain Public Security

The bill enhances the authority of the Chief of Domestic Security in providing for security assessments of new and modified state buildings (including those of state universities and community colleges), authorizes the Chief to work directly with agencies to establish safety and security best practices, and codifies the coordinating and advisory role of the Domestic Security Oversight Council.

B. EFFECT OF PROPOSED CHANGES:

Background

On September 11, 2001, the day of the terrorist attacks on America, Governor Bush issued Executive Order 01-262, which among other things, delegated to the Florida Department of Law Enforcement (FDLE) the authority to coordinate and direct law enforcement resources throughout the state to take the precautions necessary to protect Florida from future terrorist attacks. A few days later, the Governor directed FDLE and the Florida Division of Emergency Management (DEM) to complete a comprehensive assessment of Florida's capability to prevent, mitigate, and respond to future terrorist attacks. The Governor's direction required these agencies to consult with necessary stakeholders and, within 10 working days, provide him with a written report that outlined recommendations for improving the existing emergency response framework and strengthening the state's anti-terrorism strategy. That report, entitled "Assessing Florida's Anti-Terrorism Capabilities," identified four guiding principles that served to focus the agencies' efforts. The Four principles were:

- Validate and build upon the existing State Comprehensive Emergency Management Plan;
- Strengthen Florida's anti-terrorism preparedness prevention;
- Maximize involvement of federal, state and local governments, as well as any appropriate private sector entities; and
- Implement recommendations for improvements using the existing regional FDLE model.

The report contained 26 recommendations developed by FDLE and DEM. The partner agencies discussed these recommendations in greater depth in a report issued a month later titled, "Strengthening Domestic Security in Florida: Strategic Plan and Funding Strategy." A few of the recommendations in that report that have been instrumental in the development of today's domestic security structure include:

- Creation of regional domestic security task forces – the report found that Florida's counter-terrorism intelligence efforts were fragmented with a lack of information sharing among federal, state, and local law enforcement agencies. The report also found that no coordinated investigative response plan existed to respond to future attacks. In addition, it identified a lack of proper training and equipment to respond to certain kinds of terrorist acts. In an effort to remedy this deficiency, the report recommended the creation of the regional task forces, which would be co-terminus with the operational regions of FDLE, and that would be organized on the Incident Command System Model and co-chaired by FDLE agents and sheriffs in the regions. The report envisioned the task forces responding to a statewide, multi-agency oversight board

consisting of the heads of an array of first responder organizations, law enforcement entities, and emergency management entities. Duties of the proposed task forces included coordination of training, response to health and biological threats, coordinated law enforcement disaster response teams, monitoring of terrorist groups, collection and dissemination of intelligence and investigative information, and participation in criminal investigations subsequent to any future attacks.

- Train and equip all law enforcement and other first responders to meet terrorism related emergencies – The report found that past emergency training of law enforcement personnel and other first responders centered on responses to natural disasters or conventional man-made events, but few first responders had been trained in how to safely and effectively handle a mass disaster terrorism event.
- Perform physical security audits and vulnerability assessments – The report recommended audits of physical security and assessments of the vulnerability of key state infrastructure, including the buildings and facilities of state government. The audits and assessments would be carried out applying minimum standards such as determining whether background checks were required of key personnel, and determining whether appropriate access and security controls were in place.

Following this report, Governor Bush issued Executive Order 01-300, which confirmed that the previous order was still in effect, and provided for a number of organizational changes in the way state government would deal with the terrorism threat. Among the key elements of EO 01-300 are the following:

- A requirement that FDLE organize a regional domestic security task force (RDSTF) in each of its seven operational regions. Each task force was to bring together staff from FDLE, DEM, the Department of Health, and any appropriate local staff and officials necessary to support the task force mission. Task force goals included coordination of domestic security efforts among local, state, and federal resources to prevent fragmentation and duplication, coordination of training for local and state personnel, coordination of the collection and dissemination of investigative and intelligence information, and facilitation of responses to terrorist incidents within each region.
- A requirement that FDLE and DEM work in conjunction with the newly created RDSTFs to identify training curricula and materials, and initiate focused training of all of the state's first responders.
- A requirement that FDLE initiate a vulnerability assessment of the state's critical infrastructure.
- A requirement that FDLE and DEM work to prioritize the needs of first responders so that identified funding sources could be maximized in providing needed equipment and other resources.
- Creation of the position of Chief of Domestic Security Initiatives within FDLE, and enumeration of his or her duties and responsibilities.
- Creation of a Florida Domestic Security Advisory Panel tasked with advising the Governor on security matters, and acting as a liaison between the Governor, Legislature and the Chief of Domestic Security Initiatives.

Shortly after the Governor issued EO 01-300, the Legislature met in Special Session and passed legislation which formally created the position of Chief of Domestic Security Initiatives, outlined the duties and responsibilities of that position, and codified the Governor's concept of a regional approach to domestic security by fixing the RDSTFs and their role in general law. The domestic security structure has been set forth in Florida Statutes at ss. 943.03101, 943.0311, and 943.0312.

Counter-terrorism Coordination

Section 943.03101, F.S., provides a Legislative finding that specialized efforts of emergency management unique to responding to terrorism are required, and that such efforts involve close coordination of federal, state, and local law enforcement with the efforts of all others involved in emergency response efforts. Based on this finding, the Legislature has determined that such efforts should be coordinated by and through FDLE, working closely with the Division of Emergency Management and others involved in preparation against acts of terrorism in Florida, and in the initial response to such acts.

The Legislature's policy research agency, the Office of Program Policy Analysis and Government Accountability (OPPAGA), has raised concerns that Chapter 943, F.S., creates a separate emergency response system that could create confusion as to how to respond during a catastrophic event. In its report 2004-75, OPPAGA staff has stated:

Chapter 943, Florida Statutes, creates a separate structure headed by FDLE to respond to terrorism incidents than the state routinely and successfully uses to respond to other types of emergencies. We recommend that the Legislature revise ch. 943, Florida Statutes, to employ the all-hazards emergency management structure for terrorist events as well.

The bill amends s. 943.03101, F.S., so that it is clear that the Legislature intends for counter-terrorism preparations and response coordination be carried out in accordance with the all-hazards management structure set forth in the state comprehensive emergency management plan prepared pursuant to s. 252.35(2)(a), F.S.

Chief of Domestic Security Initiatives and the Florida Department of Law Enforcement

Section 943.0311, F.S., creates the position of Chief of Domestic Security Initiatives and defines the roles and responsibilities of that position, and also defines the duties of FDLE with respect to domestic security.

The Executive Director of FDLE, or a member of the department designated by the Executive Director, serves as the Chief of Domestic Security Initiatives (Chief). The Chief's statutorily defined responsibilities include:

- Coordinating FDLE's efforts in conducting ongoing assessment of Florida's vulnerability to, and ability to detect and respond to, acts of terrorism within or affecting the state;
- Making recommendations to the Governor and Legislature based on FDLE's assessments on how to limit the state's vulnerability to terrorism;
- Coordinating the collection of various proposals on ways to limit the state's vulnerability to terrorism;
- Using the RDSTFs to support FDLE in carrying out its domestic security duties; and
- Using public or private resources to support FDLE in carrying out its domestic security duties.

The Chief is responsible for ensuring that state agencies, state universities, or community colleges conduct, or assist in the conducting of, security assessments of buildings, facilities, or structures owned or leased by the agency, university or community college, and for encouraging the assessment of local government and water management district facilities. The assessments are to be conducted using the employees and resources of the entity under assessment, and information derived from the assessments must be reported in a format determined by the Chief. Initial assessments were to have been completed by November 1, 2004. Based on these assessments, the Chief annually prioritizes and reports to the Governor and Legislature suggestions for specific security enhancements of the facilities. The Chief must also recommend to the Governor and Legislature best practices for the safety and security of facilities, and may revise them as necessary.

The bill changes the name of the position from the Chief of Domestic Security Initiatives to the Chief of Domestic Security. In addition, the bill amends the scope of the security assessments conducted for state buildings, facilities and structures. Currently, the Chief is required to provide for assessments of the state's vulnerability to, and ability to detect and respond to, acts of terrorism. The bill amends that requirement so that the Chief must provide for assessments of the state's vulnerability to, and ability to detect, prevent, prepare for, respond to, and recover from acts of terrorism. This change reflects the recently adopted five-goal mission statement of the Domestic Security Oversight Council, which reads:

MISSION STATEMENT: Strengthen our domestic security prevention, preparedness, protection, response and recovery capabilities through interdisciplinary and interagency consensus and commitment to build and rely on a strong Regional Mutual Aid Response Capability.

The bill also revises the method of conducting security assessments by requiring entities conducting the assessments at the direction of the Chief of Domestic Security to utilize methods and instruments made available by FDLE. The entity making the assessment, instead of the Chief, is also required to prioritize its security needs based on the assessment's findings. The bill requires assessments to be made of newly built, modified, or acquired facilities, and the assessments must be completed within six months of taking possession or making the modification. The bill clarifies that the Chief may utilize the assessments conducted by local governments and water management districts when he or she recommends specific security enhancements to the Governor and Legislature of buildings, facilities and structures of the local governments and water management districts.

Under current law, the Chief is required to report recommendations for best practices for the safety and security of state buildings, facilities, and structures to the Governor and Legislature. The bill eliminates this requirement, but requires instead that the Chief work directly with the agencies, universities, and community colleges in developing and implement the best practices. The bill authorizes the Chief to enlist the assistance of the State Fire Marshall within the Division of Management Services, and other domestic security partners in this endeavor.

Regional Domestic Security Task Forces

The RDSTFs were codified by the Legislature because of a perceived need to develop and implement a statewide strategy to address preparation and response efforts by federal, state, and local law enforcement agencies, emergency management agencies, fire and rescue departments, first-responder personnel and others in dealing with potential or actual terrorist acts within or affecting Florida.

The RDSTFs are tasked with assisting FDLE and the Chief of Domestic Security Initiatives in their mission of accomplishing the foregoing goals. Section 943.0312, F.S., requires FDLE to establish an RDSTF in each of its seven operational regions, and to dedicate employees to support the function of each task force. Each task force is co-chaired by FDLE's regional director and by a local sheriff or chief of police from within the operational region. Each RDSTF may also include representatives from DEM, the Department of Health, local emergency planning committees, state and local law enforcement agencies, fire and rescue departments, first-responder personnel, and other persons deemed appropriate by the co-chairs.

Delineated goals of the RDSTFs include:

- Coordinating counter-terrorism efforts among local, state, and federal resources to ensure that efforts are not fragmented or unnecessarily duplicated;
- Coordinating counter-terrorism training for local and state personnel;
- Coordinating the collection and dissemination of investigative and intelligence information; and
- Facilitating responses to terrorist incidents within or affecting each region.

Task forces are authorized, with the approval of the Chief of Domestic Security Initiatives, to incorporate other objectives reasonably related to the goals of enhancing the state's domestic security and ability to detect, prevent, and respond to acts of terrorism within or affecting the state. Regional task forces also play a part in establishing equipment needs and training standards and curricula. The Chief of Domestic Security Initiatives is directed by statute to work in conjunction with DEM, the task forces, and various state entities responsible for establishing first-responder training standards, to identify appropriate equipment and training needs, curricula, and materials related to the effective response to suspected, actual, or hoax acts of terrorism. The Chief of Domestic Security Initiatives utilizes the expertise of the RDSTFs and other stakeholders in developing funding and policy recommendations with respect to equipment purchases, delivery of training, or revisions to training requirements. The recommendations are delivered to the Governor and Legislature, and also identify available funding sources.

The bill amends s. 943.0312, F.S., to revise the Legislative findings so that they reflect the mission of the Domestic Security Oversight Council to include the five goals expressed in that mission: prevention, preparation, protection, response and recovery. The bill also revises references to the title of Chief of Domestic Security Initiatives to reflect the name change to Chief of Domestic Security, and revises the name of the FDLE co-chair of the RDSTF from "regional director" to "special agent in charge." This name change more accurately reflects the current operations of FDLE. The bill also provides that the role of the RDSTF is not merely advisory in nature, but that the task force must provide support to FDLE in the performance of its domestic security functions.

The bill also revises the list of entities that may provide representatives as members of an RDSTF. Instead of available representatives of DEM or the Department of Health, membership may now include representatives of emergency management agencies, and health medical and hospital agencies. This change reflects the importance of including health care providers in the domestic security decision-making process, as they are an integral part of a response to any mass casualty event, whether terrorism related or otherwise.

Under the provisions of the bill, the co-chairs of the RDSTFs are also authorized to establish subcommittees, and appoint chairs to those subcommittees, to address the issues related to particular disciplines represented on the task forces. The provision requires the approval of the Director of DEM in the naming of a chair to an emergency management subcommittee. All subcommittee chairs serve at the pleasure of the task force co-chairs.

The bill also provides that the RDSTFs must work toward their goals in accordance with the state's domestic security strategic goals and objectives, and requires the Chief of Domestic Security to also report to the Domestic Security Oversight Council when making its funding recommendations for equipment and training to the Governor and Legislature.

Domestic Security Oversight Council

After issuance of the Governor's Executive Orders, FDLE determined that it would need interagency consensus and support to perform its newly assigned duties related to domestic security, now codified in Chapter 943, Florida Statutes. For this reason, in November of 2001, FDLE called together a new oversight panel, generally known as the "State Domestic Security Oversight Board" (DSOB). The DSOB mainly consisted of executive-level leaders from affected agencies and a host of ex-officio participants drawn from federal and state government. The DSOB's main purpose was to assist FDLE in managing the new domestic security function and responsibilities.

The DSOB has met regularly (approximately four times per year) since its origin, and has served as a "sounding board" for actions recommended by FDLE to the Governor and Legislature, but has never been formally constituted nor recognized as a state board or advisory council. However, the board has taken on an increasingly important role in shaping the state's domestic security policy. The DSOB has been responsible for developing recommendations for program review, homeland security grant fund prioritization, and state domestic security strategy refinement. Although the DSOB is not recognized in

the Florida Statutes as an official body of state government, at a recent meeting it adopted formal by-laws and changed its name to the Domestic Security Oversight Council (DSOC). A workgroup appointed by FDLE Commissioner, Guy Tunnell, recommended that the body be codified into law to ensure that it remain an integral part of Florida's domestic security governance model, and a recent Interim Project Report, 2005-143, published by the Florida Senate has reached a similar conclusion.

The bill codifies the DSOC, provides for its membership (both voting and non-voting ex officio), and provides for the governance and duties of the council. Specifically, the bill:

- Provides legislative findings that a need exists to provide executive direction and leadership with respect to terrorism prevention, preparation, protection, response and recovery efforts. The bill creates the DSOC and provides that it is an advisory council to the Governor and Legislature, and that it will provide guidance to the various state workgroups and the RDSTFs.
- Provides for voting membership, which includes –
 - The Executive Director of the Department of Law Enforcement;
 - The Director of the Division of Emergency Management;
 - The Attorney General;
 - The Commissioner of Agriculture;
 - The Secretary of Health;
 - The Commissioner of Education;
 - The State Fire Marshall;
 - The Adjutant General of the Florida National Guard;
 - The Chief Information Officer of the State Technology Office;
 - Each Sheriff or Chief of Police who serves as an RDSTF co-chair;
 - Each FDLE Special Agent in Charge who serves as an RDSTF co-chair;
 - Two representatives of the Florida Fire Chiefs' Association;
 - One representative of the Florida Police Chiefs' Association;
 - One representative of the Florida Prosecuting Attorneys' Association;
 - The Chair of the Statewide Domestic Security Intelligence Committee;
 - One representative of the Florida Hospitals' Association;
 - One representative of the Florida Emergency Medical Services Advisory Council;
 - One representative of the Florida Emergency Preparedness Association;
 - One representative of the Florida Seaport Transportation and Economic Development Council.
- Authorizes the invitation of non-voting, ex officio membership, including, but not limited to:
 - The Executive Director of the Department of Highway Safety and Motor Vehicles;
 - The Secretary of Health Care Administration;
 - The Secretary of Environmental Protection;
 - The Director of the Division of Law Enforcement within the Fish and Wildlife Conservation Commission;
 - A representative of the Commission on Human Relations;
 - A representative of the United States Coast Guard;
 - A U.S. Attorney from a federal judicial circuit within Florida;
 - A Special Agent in Charge of the Federal Bureau of Investigation within Florida;
- Provides that membership on the council does not disqualify a person from holding any other public office or employment by a public entity, except that members of the Legislature may not serve on the DSOC;
- Provides that the FDLE Executive Director is the chair and that the Director of DEM is the vice-chair, and that when both are absent, the chair may designate another council member to act as temporary chair for a defined time period;
- Provides for the appointment of designates to act on behalf of absent members. Absent RDSTF co-chairs must designate an RDSTF subcommittee chair;
- Requires the establishment of by-laws to provide for the general governance of the council;
- Provides that terms of membership are limited to the period of office, employment or appointment that served as a basis for membership on the council;
- Provides that members serve without compensation, except for per diem and travel expenses;

- Requires FDLE to provide the council with support staff;
- Requires the council to meet at least twice annually, but authorizes additional meetings, and provides that a majority of the voting membership constitutes a quorum;
- Establishes an Executive Committee of the Council, consisting of –
 - The Executive Director of FDLE;
 - The Director of DEM;
 - The Attorney General;
 - The Commissioner of Agriculture;
 - The Secretary of Health;
 - The Commissioner of Education; and
 - The State Fire Marshall.
- Provides that the Executive Director of FDLE serves as chair of the Executive Committee, and that the Director of DEM serves as the vice-chair;
- Provides that the Executive Committee approves matters to be considered by the council as whole, and that it can take expedited action on behalf of the council when deemed necessary by the chair or vice-chair;
- Provides duties of the council, including –
 - Review development, maintenance and operation of the state's comprehensive domestic security strategy;
 - Review the development of funding plans;
 - Review and approve prioritized funding recommendations of the RDSTFs and state working groups;
 - Review the domestic security policies and operational protocols of the RDSTFs and state agencies;
 - Evaluate the effectiveness of domestic security and counter-terrorism efforts in the state;
 - Evaluate state and local efforts to secure critical infrastructure;
 - Evaluate legislative initiatives related to domestic security;
 - Review multi-agency and state-wide responses to domestic security incidents to recommend improvements to training, response, and coordination;
 - Provide general oversight of the state's domestic security efforts and report to the Governor and Legislature;
 - Promote intergovernmental cooperation and consensus.
- Requires the council to annually report to the Governor and Legislature its activities, and recommendations for prioritized funding of domestic security needs, based on recommendations of the RDSTFs and working groups, consistent with the state's strategic priorities;
- Defines the council as a "criminal justice agency" for the purposes of public records laws.

The bill takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1. Amends s. 943.03101, F.S., clarifying that counter-terrorism coordination and event response is accomplished in accordance with the state comprehensive emergency management plan.

Section 2. Amends s. 943.03, F.S., changing the name of the position of "Chief of Domestic Security Initiatives" to "Chief of Domestic Security."

Section 3. Amends s. 943.0311, F.S., revising the duties of FDLE and the Chief of Domestic Security Initiatives with respect to providing for the assessment of state, university and community college building, facility, and structure security, and changing the name of the chief to the Chief of Domestic Security.

Section 4. Amends s. 943.0312, F.S., revising the role and structure of the regional domestic security task forces.

Section 5. Creating s. 943.0313, F.S., establishing a Domestic Security Oversight Council and providing for its composition, governance, and duties.

Section 6. Amends s. 381.00315, F.S., conforming the references to the Chief of Domestic Security Initiatives to the position name change provided in this bill.

Section 7. Providing that the bill shall take effect upon becoming law.

II. 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:

None.

D. FISCAL COMMENTS:

The fiscal framework for domestic security in the state currently exists. This bill does not change that framework and no additional fiscal impact is anticipated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Because of the sensitive nature of some confidential law enforcement investigative and intelligence information that will be discussed at council meetings from time to time, and because of the review of security planning, some meetings of the council must be closed. Due to constitutional requirements, the necessary public records and open meetings exemptions are considered in a separate linked bill.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES