



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #616

### **Transfer Police Services to Department of Administration (DOA -- Transfers and State Fair Park)**

[LFB 2013-15 Budget Summary: Page 33, #5 and Page 441, #3]

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#### **CURRENT LAW**

State Fair Park is a 190-acre site in West Allis and Milwaukee that hosts the annual Wisconsin State Fair and various events throughout the year. The Park is overseen by the State Fair Park Board and is budgeted as a separate agency. State Fair Park's operations are funded by program revenue from the State Fair and rentals of Park facilities for events year-round. The State Fair Park staff currently includes a full-time chief of police. The police chief oversees and directs other sworn police officers hired as needed as limited-term employees (LTEs) for events throughout the year, the largest of which is the annual Wisconsin State Fair. Additionally, the Park hires LTEs for other security and event management services, but these persons typically are not sworn law enforcement officers.

The Division of Capitol Police in the Department of Administration (DOA) is responsible for the protection of state facilities, officials and employees, as well as for providing security for visiting dignitaries and conducting investigations as necessary. Capitol Police officers are stationed in Madison and Milwaukee. The Division of Capitol Police currently is allocated 51.0 positions, of which 46.0 are for law enforcement, including a chief and deputy chief, ranking and patrol officers, and communications staff.

#### **GOVERNOR**

Require State Fair Park to enter into a memorandum of understanding (MOU) with the Capitol Police for the provision of police and security services at State Fair Park. Transfer 1.0 position for the State Fair Park police chief to DOA, and convert the following PR amounts from State Fair Park's base budget into \$956,700 each year in supplies and services: (a) \$81,900 in salaries for permanent positions; (b) \$752,200 in limited-term/miscellaneous employee salaries;

and (c) \$122,600 in fringe benefits. Provide DOA with 1.0 position and \$1,044,300 PR annually, including: (a) \$81,900 for permanent position salaries; (b) \$776,100 annually for LTE/miscellaneous employee salaries; (c) \$96,300 for fringe benefits; and (d) \$90,000 annually for supplies and services.

## **DISCUSSION POINTS**

1. The transfer of police services between the Capitol Police and State Fair Park has occurred two other times in recent biennia. In 2001 Act 16, DOA was provided 6.5 full-time police officer positions from State Fair Park, and the Capitol Police began providing State Fair Park police services under an MOU that was finalized in September, 2002. The 2001 transfer occurred, in part, at the request of the Park. At that time, Park officials believed the transfer would be a more efficient way to provide services at the Park. The MOU was terminated effective July 1, 2007, after which State Fair Park resumed arranging for its own police services. 2007 Act 20 also provided State Fair Park with 1.0 position for a chief of police. DOA reports the subsequent return of police services to the Park was due to the Department seeking to reduce costs and eliminate non-core functions. The administration intends for the current recommendation to provide the Capitol Police with a larger pool of officers to meet staffing needs among the Capitol Police's current areas of responsibility and State Fair Park, both of which the administration contends have uneven demand for police services.

2. State Fair Park currently provides for police and security services from a variety of sources. In 2011-12, the Park reports 113 officers served patrol shifts at some point in the year. The Park typically has scheduled at least one police officer on duty around the clock, but recently it also has used other personnel for overnight shifts. The Park's most significant police staffing needs occur during the annual Wisconsin State Fair. For the 2012 State Fair, the Park reports 94 LTE officers worked an average of 124 hours during the two-week pay period including most of the State Fair. State Fair Park reports its LTE officers, all of whom are sworn, are approximately equally divided between retired officers, those having full-time police jobs with other agencies, and those that have been fully trained for full-time police work but are not yet serving full-time with any agency. Those serving with other agencies work at the Park during vacation or off hours from their full-time jobs. Capitol Police reports it intends to continue using mostly LTE officers for State Fair Park police coverage, with supplementation as needed by Capitol Police officers currently stationed in the Milwaukee area.

3. In addition to services from sworn law enforcement officers, the Park hires approximately 300 to 400 LTEs as security personnel each year. These persons do not serve in a law enforcement capacity, and their responsibilities at the Park do not normally require significant training; rather, they assist with event management, such as crowd traffic control and event setup and striking. Most of these persons are paid from \$7.25 to \$9 per hour, and most serve during the State Fair, although a portion of security employees remain available to the Park for other events that are scheduled throughout the year. Capitol Police reports it would continue this security model.

4. Further, the Park has arrangements with a number of neighboring municipalities for police and other municipal services. Currently, the Park pays the City of West Allis \$320,000 annually for fire and supplemental police services. Police rates under this MOU are discounted 50%, provided the Park has police coverage 24 hours a day. The Park also is authorized by statute to

provide a grant to the City of West Allis for crowd and traffic control services outside Park grounds for traffic before and after Park events; the Park currently pays West Allis an additional \$30,000 annually for crowd control services. In addition, the Park has arrangements for mutual training and assistance with the Milwaukee Police Department, the Milwaukee County Sheriff's Office and the Wauwatosa Police Department. Wisconsin State Patrol officers also have served during the State Fair since 2011, when there were several disturbances on the Fair's opening night. State Fair Park reports it is not billed for mutual assistance, but, depending on the nature of an emergency, other agencies may prioritize responses in their respective jurisdictions prior to addressing State Fair Park needs. Capitol Police reports it intends to continue mutual assistance and training arrangements as appropriate, following evaluation of the arrangements.

5. The Park reports it is at times difficult to schedule police and security personnel well in advance of events. In some instances, an event may be scheduled within days of it occurring; for example, Park staff report it is not uncommon for an event to book space for a weekend event during the week the event is to occur. As such, the Park at times schedules its LTE staff on short notice.

6. The administration reports the \$1,044,300 increase budgeted to DOA, which would be received as program revenue, represents: (a) the average yearly State Fair Park expenditure for police costs for the 2009-10 through 2011-12 fiscal years, or about \$692,900; and (b) budgeted security costs of \$325,000 for the Park in 2011-12, plus \$26,400 associated with additional security costs under the separate budget item that would increase the Park's general operations budget.

7. State Fair Park does not pay its employees, including LTE officers, at typical overtime rates (1.5 times the base rate) for hours exceeding 40 per week, or 80 in a two-week pay period. For police officers, overtime work mostly occurs during the State Fair. Rather, the Park contends, and the Office of State Employment Relations has previously concurred, that it qualifies under provisions of the federal Fair Labor Standards Act (FLSA) that exempt amusement and recreational establishments from overtime compensation laws. (The relevant exemptions have been incorporated into administrative rules promulgated by the Department of Workforce Development.) To qualify for the exemption, federal law requires such an establishment either to: (a) operate no more than seven months in any calendar year; or (b) during the preceding calendar year, have average revenues during any six months of the year that were not more than 33.33% of the revenues for the other six months of the year. The Park typically qualifies under (b), due to the concentration of its revenues around the time of the State Fair. State Fair Park's use of the FLSA exemption for overtime pay has been the subject of formal complaints to the state since the Park began using the exemption around 2011. However, complaints to date have all been dismissed.

8. It does not appear the Capitol Police and DOA would qualify for the FLSA exemption for amusement and recreational establishments under either eligibility criterion. The FLSA does contain certain limited exemptions on overtime for officers of law enforcement agencies. These would appear to exempt perhaps 86 hours per two-week pay period from overtime, rather than 80 hours. However, DOA reports current policy with respect to LTEs is to pay overtime for hours exceeding 40 per week.

9. DOA and State Fair Park each have submitted figures purportedly reflecting expenditures and billings under the 2001-2007 MOU. However, the sets of figures are not

reconciled, and it is not clear from reviewing the figures to what degree costs were different with police services being provided by each agency.

10. The following table shows hourly pay rates paid by State Fair Park for LTE officers with hours worked and pay earned in 2011-12. DOA reports Capitol Police pay all LTEs at a rate of \$19 per hour. Capitol Police reports it does not differentiate pay based on rank. For the 2011-12 fiscal year, which included the 2011 Wisconsin State Fair, State Fair Park's LTE officers worked a total of approximately 24,700 hours, or the equivalent of over 12 full-time equivalent positions. (These costs do not include hours logged by the full-time chief of police, hours attributed to police-related duties of office staff, or related supplies and miscellaneous costs.) Using Park data for hours worked by LTE police per two-week pay period in 2011-12, and assuming Capitol Police hourly pay rates plus overtime pay for hours exceeding 80 over two weeks, it appears total compensation costs for police staff under such conditions could be approximately \$79,200 higher annually than under State Fair Park's compensation structure, if no changes were made to individual hours worked. Additionally, if security personnel are paid at current base rates but with overtime pay, and assuming scheduling were to remain mostly consistent with 2011-12, it appears security salary and fringe benefits may increase by perhaps \$10,800, or approximately \$90,000 annually for combined police and security costs.

#### **State Fair Park Police and Capitol Police Pay Rates**

<u>Position</u>	<u>State Fair Park</u>			<u>Capitol Police</u>		
	<u>Rate</u>	<u>Hours</u>	<u>Salary/Fringe</u>	<u>Rate</u>	<u>Hours</u>	<u>Salary/Fringe</u>
Officer	\$16.50	14,000	\$252,900	\$19.00	14,000	\$308,100
Sergeant	\$17.40	7,300	142,000	19.00	7,300	160,000
Lieutenant	\$17.90	2,100	40,900	19.00	2,100	44,500
Detective	\$18.70	<u>1,300</u>	<u>27,800</u>	19.00	<u>1,300</u>	<u>30,200</u>
Total		24,700	\$463,600		24,700	\$542,800

11. Under these assumptions, it appears a higher base pay rate plus overtime pay obligations could either: (a) exhaust any additional expenditure authority the bill may provide to Capitol Police at a faster rate than State Fair Park would expend the same amounts under current practice; or (b) result in fewer hours of coverage over the course of the fiscal year. If hours were reduced, it is not yet clear how this would affect the discount currently provided the Park under the MOU with West Allis for the Park having 24-hour police coverage. Capitol Police could also consider hiring additional personnel to limit average hours worked per person. DOA reports that pending the agreement on an MOU, and pending continuing review of State Fair Park operations, it cannot be specifically determined at this time how costs would be managed consistent with Capitol Police expenditure authority. DOA also reports that State Fair Park police could be supplemented with Capitol Police officers stationed in Milwaukee, which would not be expected to be billed to the Park.

12. Several arguments could be made in favor of the recommendation. The administration expects a single police force would undergo standardized training and establish a corps of officers that could be more readily deployed commensurate with future police needs for state facilities. One could argue it may benefit the Park to have Capitol Police's permanent officers

stationed in Milwaukee available for events booked on short notice, or for emergency situations. Also, should DOA hire officers and be required to pay overtime rates, such a practice may obviate future complaints against the Park's current practice. The Committee could consider adopting the Governor's recommendation [Alternative 1].

13. Several arguments also could be made against the recommendation. It could be argued that transferring police coverage from the Park's direct purview may inhibit the Park's ability to promptly establish a sufficient and timely police and security presence if booking events, some which may be booked shortly before beginning, were to require coordination among the Park, DOA and an event manager/promoter, as opposed to two primary parties. Further, DOA's base officer and overtime pay rates may increase average hourly costs, which may require: (a) increasing annual billings to State Fair Park; (b) reducing police coverage to align with the expenditure authority provided to Capitol Police; (c) transferring Capitol Police coverage away from current assignments to State Fair Park; (d) expanding the pool of police and security staff; or (e) some combination of these. Reduced coverage may risk a current agreement with the City of West Allis under which the Park receives discounted billings for police coverage. The Committee could consider deleting the Governor's recommendation [Alternative 4].

14. If the Committee wished to adopt the recommended transfer, it could consider providing additional expenditure authority to Capitol Police to cover potential cost increases. An amount of \$90,000 annually could be provided to reflect the amounts by which 2011-12 costs could be adjusted, assuming consistent work hours, a base pay rate differential, and DOA policies on overtime pay [Alternative 2a]. This would make the net increase for Capitol Police under the bill \$1,134,300 annually. It could be argued this may be more reflective of expected costs.

15. If the Committee wished to adopt the recommended transfer, it could require that the incumbent chief of police at State Fair Park is to be transferred to DOA, with retention of rights and privileges earned in previous service, without the requirement of serving a probationary period [Alternative 2b]. Provisions transferring incumbents are common in budget legislation that transfers programs and filled positions between agencies. However, AB 40 does not contain language that would transfer the State Fair Park incumbent. The administration notes the current incumbent, who currently serves in an unclassified position, could compete for the new DOA position, which DOA reports would be an officer with the rank of major and in the classified service, with responsibilities for coordinating Capitol Police staff and resources in the Milwaukee area.

16. One could argue the more appropriate staff to transfer to Capitol Police would be police from State Fair Park, as opposed to other security personnel. Because non-police security personnel serve mostly for event management and crowd control, but do not have law enforcement training or arrest powers, and do not carry firearms, it could be argued the responsibilities of such persons is not so similar to the responsibilities of Capitol Police officers that a transfer of these services to Capitol Police is appropriate. The Committee could consider transferring only State Fair Park police services to Capitol Police, while maintaining remaining security personnel under the direction of State Fair Park [Alternative 3]. This alternative would require reducing expenditure authority in DOA by \$351,400, with \$326,400 from LTE/miscellaneous salary and \$25,000 from fringe benefits, while converting \$351,400 from supplies and services under State Fair Park's general operations to the same amounts of LTE salaries and fringe benefits.

## ALTERNATIVES

1. Adopt the Governor's recommendation to transfer the provision of police and security services at State Fair Park to the Department of Administration, and require the agencies to enter into a memorandum of understanding for the provision of services.

2. Adopt the Governor's recommendation. In addition, specify one or both of the following:

a. Provide DOA additional expenditure authority of \$90,000 PR annually in its appropriation for Capitol Police operations, to reflect additional costs related to differences in agency compensation practices.

<b>ALT 2a</b>	<b>Change to Bill</b>
	Funding
PR	\$180,000

b. Specify the incumbent police chief at State Fair Park is to be transferred to DOA, and is to retain rights and privileges earned during the course of previous service, without the requirement of serving a probationary period.

3. Modify the Governor's recommendation to transfer only police services to Capitol Police. (Security would continue to be provided by the Park as needed.) Delete \$351,400 PR annually from DOA facilities and Capitol police operations, and convert the same amount in the State Fair general operations appropriation from supplies and services to salary and related costs.

<b>ALT 3</b>	<b>Change to Bill</b>
	Funding
PR	- \$702,800

4. Delete the Governor's recommendation.

<b>ALT 4</b>	<b>Change to Bill</b>
	Funding
PR	- \$2,088,600

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