

# Legislative Analysis



## PRIVATE COLLEGE SECURITY FORCE

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**House Bill 5094 as introduced**  
**Sponsor: Rep. Larry DeShazor**

**House Bill 5095 as introduced**  
**Sponsor: Rep. Jimmy Womack**  
**Committee: Judiciary**

### First Analysis (8-17-09)

**BRIEF SUMMARY:** House Bill 5095 would permit an eligible private college or university to create a private college security force; grant full arrest powers within the grounds of the institution; set minimum standards and qualifications for officers; and require liability insurance coverage for each officer. House Bill 5094 would allow the Michigan Commission on Law Enforcement Standards to impose a reasonable fee for performing duties under the provisions of House Bill 5095.

**FISCAL IMPACT:** A fiscal analysis is in process.

### THE APPARENT PROBLEM:

Public Act 330 of 1968, the Private Security Business and Security Alarm Act, allows businesses and educational institutions, such as colleges and universities, to establish private security police organizations responsible for the protection of property on the premises of the business or educational institution. Private security police officers are authorized to carry weapons and have arrest powers – with some limitations. For example, an officer may carry a weapon or make felony or misdemeanor arrests only during the officer's hours of employment, while in full uniform, and only when the officer is on his or her employer's premises.

The University of Detroit Mercy has operated such an organization for several years. However, because of the urban location of its three campuses, UDM officials feel that the security needs of the campuses are greater than those faced by similar institutions located in other settings. They would like to employ individuals who have completed MCOLES training to patrol the UDM campuses. MCOLES (Michigan Commission on Law Enforcement Standards) is responsible for the establishment of minimum standards for certification of police officers and certifying as law enforcement officers those individuals meeting employment and training requirements.

The problem the bills seek to address is that a licensed police officer who leaves employment with a public law enforcement agency to take a job as a private security police officer loses his or her MCOLES certification after two years. Thus, it is difficult to attract or retain individuals with the desired training and competency, as these employees often leave within two years to return to public law enforcement before their

certification expires. Though MCOLES operates a program by which individuals previously employed by law enforcement agencies can be recertified without having to redo the entire training regimen, it does not apply to those who were decertified while employed as private security police officers.

UDM has requested legislation to allow some private colleges and universities to establish a private security force—distinct from a private security police organization—that would allow eligible institutions to hire MCOLES-trained individuals and allow those employees to be eligible for the MCOLES Recognition of Prior Training and Experience Program.

### ***THE CONTENT OF THE BILLS:***

Together, the bills would allow certain private colleges or universities (only ones with campus housing) to establish a private college security force and allow the Michigan Commission of Law Enforcement Standards (MCOLES) to impose a reasonable fee for services required under the legislation. The bills are tie-barred to each other, meaning that neither bill could take effect unless the other was also enacted.

House Bill 5095 would amend the Private Security Business and Security Alarm Act (MCL 338.1052 et al.). The bill would add several new sections that would allow the governing board of a private college or university to create a private college security force and appoint persons to be members of that force. To be eligible, a private college must have students residing in college or university housing. The governing board would have to assign duties, including the enforcement of college or university regulations, and prescribe the oath of office. “Governing board” would mean a board of regents, board of trustees, board of governors, board of control, or other governing body of an institution of higher learning.

Unless licensed under the act, an institution could not operate a private college security force (however, a separate provision in the bill implies that licensure for a private college security force is voluntary). The Department of State Police would have to grant a license to any institution complying with the bill’s requirements.

Creation of private college security force. First, only a private college or university with campus housing could create a force. Next, the governing board would have to obtain the approval of the prosecuting attorney and the sheriff of each county within which the institution owns, maintains, or controls property. If the property was located entirely within one city, the board would also have to obtain the approval of the chief of police. If the property spanned more than one city, then the approval of each city’s chief of police would have to be obtained.

Before granting approval, the chief of police, prosecuting attorney, and sheriff would have to determine that the proposed law enforcement agency is needed to assure adequate public safety. Approval by any of the entities could be rescinded at any time, in which case the private college security force would cease to operate.

Additionally, the board of governors would have to satisfy the good character, competence, and integrity requirements of the Department of State Police for licensees.

Private college security officers. A person appointed as a private college security officer would have to meet certain selection qualifications, standards, and requirements prescribed in departmental rules that pertain to the Michigan Commission on Law Enforcement Standards (MCOLES), entitled “Law Enforcement Standards and Training.”

Private college security officers could participate in the Recognition of Prior Basic Law Enforcement Training and Experience Program as prescribed in the MCOLES rules.

Investigations conducted to determine if a candidate for appointment as a private college security officer met the selection qualifications, standards, and requirements would be governed by certain MCOLES departmental rules. (The rules referenced in the bill apply to investigations of violations of the MCOLES act, license sanctions for felony convictions or fraud on a license application, and review of investigations for criminal wrongdoing, among other things.)

An officer would have arrest powers for violations of state statutes and local ordinances only on property owned or leased by the institution, wherever located. Officers would not be certified as law enforcement officers under MCOLES. Officers could not serve civil process.

Officers would be ineligible to participate in any state, county, or municipal retirement system and would not be reimbursed for training with state funds. Uniforms, vehicles, and badges of officers would have to be distinctive from those of the local law enforcement agency where the institution was located.

Duties of a governing board/oversight committee. A board would have to establish a private college security force oversight committee before granting powers and authority to the officers. The oversight committee would be composed of the local county sheriff and prosecutor, and also the chief of police (if the institution were located in a municipality having a police force), as well as six individuals appointed by the institution’s administration.

The committee would have to receive and address grievances against the security officers or the force. The committee could recommend to the governing board that disciplinary measures be taken by the institution against a private college security officer found responsible for misconduct in office.

The governing board would also have to provide liability insurance for not less than \$250,000 of coverage for each member of the private college security force – without cost to the member – to insure the member against liability arising out of or in the course of employment. This provision would not apply if the indemnification was provided by a program of self-insurance.

Fees. A private college security force would have to pay a license fee of \$500 and file with the Department of State Police a \$25,000 bond. In addition, an institution could be subject to a fee payable to MCOLES.

Miscellaneous provisions. Writings prepared, owned, used in the possession of, or retained by a private college security force would be subject to the Freedom of Information Act. The bill would also add definitions for the terms “commission,” and “private college security force,” as well as excluding a private college security force from the definition of “private security police.” (Currently, “private security police” means that part of a business organization or educational institution primarily responsible for the protection of property on the premises of the business organization.)

A provision in the act requiring each license applicant to sign and verify the license application, and submit two passport quality photographs, would not apply to a private college security force. Neither would a provision pertaining to uniform license application forms, investigation of the qualifications of license applicants, and issuance of a temporary license.

Further, the bill would delete numerous obsolete provisions and make many revisions of an editorial nature.

House Bill 5094 would amend the Commission on Law Enforcement Standards Act (MCL 28.610) to allow the commission to impose a reasonable fee for performing its duties under Sections 37 to 43 which would be added by House Bill 5095. The fee would be payable by the private college or university for which the duties were performed. The fee could not exceed the commission’s actual cost incurred in performing those duties.

### ***BACKGROUND INFORMATION:***

According to University of Detroit Mercy, almost a decade ago, under a Memo of Understanding with the City of Detroit Police Department, UDM hired Detroit police officers to patrol its campuses, as well as nearby off-campus locations. However, a change to the statutory definition of “police officer” or “law enforcement officer” enacted by Public Act 379 of 2004 (enrolled House Bill 5907) effectively ended the relationship between UDM and the Detroit Police Department. Intended, among other things, to clarify the terms, the legislation limited the application of the terms to officers employed by public entities.

UDM subsequently sued MCOLES to require the agency to grant law enforcement certification to employees of its Public Safety Department under provisions of the Commission on Law Enforcement Standards Act (CLESA), the act amended by Public Act 379 of 2004. Specifically, the action centered on whether an UDM Public Safety Department employee constituted a law enforcement officer or police officer under the new definition. The trial court ruled in favor of UDM and a permanent injunction was granted by the court that, in essence, required MCOLES to recognize UDM as a public agency eligible to hire and employ licensed police officers.

MCOLES appealed and the Michigan Court of Appeals overturned the lower court's decision and lifted the injunction. In an unpublished decision, the appeals court held that the agency relationship maintained through the Memo of Understanding between UDM and the Detroit Police Department did not satisfy the requirements of the definition of "law enforcement agency" as (1) the term "is commonly understood to be an organization supplying police services, such as a city's police force or the Federal Bureau of Investigation" and (2) "the agency must be one that is authorized and established pursuant to law." *University of Detroit Mercy v Department of State Police Michigan Commission on Law Enforcement Standards*, Docket No. 266311 (March 6, 2007)

## **ARGUMENTS:**

### ***For:***

The bill would create a new category of private campus security. To be eligible, a private college or university would have to have university housing in addition to the approval of county, and in some circumstances, city law enforcement agencies.

The advantage of this legislation to private colleges and universities over what is currently available is that the educational institutions could hire, and be more likely to retain, individuals that meet the same stringent training and eligibility standards that public law enforcement officers must meet. This is particularly important for those institutions located in higher-crime urban settings. In light of shootings and other serious crimes on college campuses in recent years, any eligible college or university may benefit by the increased capabilities in its security force the bills would afford. However, under current law, it is difficult to retain these highly trained individuals because they lose their MCOLES certification if they leave the employ of a public law enforcement agency for more than two years.

During the time an individual was employed as a private security force officer, he or she would not be deemed to be MCOLES certified, but the bill would allow those years of employment to qualify the officer for eligibility in the MCOLES Recognition of Prior Training and Experience Program. However, the years an individual was employed as a private college security force officer would not count as service credit for any public pension plan the officer was enrolled in before or after being employed by a public law enforcement agency.

As reported from committee, House Bill 5095 also includes important safeguards. Oversight of the security force would be provided by a committee comprising individuals from law enforcement and the college or university community. If any of the parties required to approve the security force rescinded that approval, the private college security force would cease to operate.

### ***Against:***

The legislation is not needed as private colleges and universities are already authorized to establish private security police organizations, complete with misdemeanor and felony

arrest powers for officers when on the property of the educational institution. These organizations can, and do, hire MCOLES-trained individuals now.

Moreover, House Bill 5095, in its current form, is seriously flawed. According to MCOLES, as written, the bill seems to imply that MCOLES would be charged with screening officers employed by private college security forces. Not only are the MCOLES standards not designed for this purpose, the bill could inadvertently create a cause of action against the state regarding licensing actions or denials of licensure of private security force officers or candidates. Although both bills would allow MCOLES to be reimbursed for services provided, MCOLES estimates that the cost to develop and implement such a program would be so prohibitive it would exceed the “reasonable fee” cap placed in the legislation.

Other concerns with House Bill 5095 include the following:

- Confusion, inconsistency, and some conflicts regarding the training and candidate eligibility of private college security force officers could be avoided if the bill required the Department of State Police to prescribe the training requirements for such officers as the act currently does for private security police officers. Instead, the bill references numerous individual administrative rules that pertain to MCOLES training and candidate eligibility.
- The bill grants full arrest powers to private college security force officers, which includes arrests and tickets for traffic laws and civil infractions – a power previously reserved for licensed public law enforcement officers.
- Several provisions of the act that apply to private security police officers, but seemingly should be amended to also apply to private college security force officers have been left out of the bill; for example, the restriction that the arrest powers and right to carry a weapon apply only to the actual hours of employment and while in full uniform. In another example, it is a 93-day misdemeanor for a person to falsely state or represent that he or she is a security police officer, but the bill does not apply this penalty to a person who falsely states he or she is a private college security force officer.
- Other provisions in the act should be amended to be consistent with provisions that apply to private security police organizations; for instance, the badges, uniforms, and vehicles of a private college security force would have to be distinguishable from those of the local law enforcement agency under the bill, but the act requires the Department of State Police to approve some of the same for private security police organizations.
- The bill would subject a private entity to provisions of the Freedom of Information Act, which only applies to public entities.



- The bill contains several technical errors, such as the inconsistent use of the terms “governing board,” “governing body,” and “board of governors.”

***Against:***

The bills represent a policy shift. Historically, state law has divided those who protect the public and enforce state and local criminal laws into two classes: (1) those who are individually licensed by the state and have virtually unlimited police powers, i.e., peace officers; and (2) those who are not individually licensed by the state (the state licenses the employing agency, but not the individual officers), who have limited authority (only on the property of their employers), and who are not peace officers. The only exception is for railroad officers employed by private railroads under the Railroad Code.

Thus, the bills would create a new class of officers – private law enforcement officers who have all the arrest and enforcement powers of licensed police officers. In effect, the bills represent the privatization of a police force. Though some contend this merely reflects a nationwide trend for public entities to outsource security to the private sector, others feel that such a shift in policy has “serious implications over how the provision of security is conceptualized, as well as for the forces that create state power.” (Web article, “Police duties becoming part of private security,” posted by privateofficersnews on May 18, 2009.)

***POSITIONS:***

Representatives of the University of Detroit Mercy testified in support of the bills. (6-19-09)

A representative of the Office of Attorney General testified in support of the bills. (6-19-09)

A representative of the Detroit Police Department testified in support of the bills. (6-17-09)

The Department of State Police opposes the bills. (7-29-09)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.