

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates a new department within the executive branch.

Maintain public security – The bill moves certain disparate law enforcement entities into a single department.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Highway Patrol

The Department of Highway Safety and Motor Vehicles (HSMV) is created by s. 20.24, F.S. The Florida Highway Patrol (FHP) is a division of HSMV.¹ The other divisions that constitute HSMV are the Division of Drivers' Licenses and the Division of Motor Vehicles.

Chapter 321, F.S., details the duties of the Florida Highway Patrol. Specifically, the FHP must:

- Patrol the state highways and regulate, control, and direct the movement of traffic thereon;
- Maintain the public peace by preventing violence on highways;
- Apprehend fugitives from justice;
- Enforce all laws regulating and governing traffic, travel, and public safety upon the public highways and provide for the protection of the public highways and public property thereon;
- Make arrests without warrant for the violation of any state law committed in their presence;
- Regulate and direct traffic concentrations and congestions;
- Enforce laws governing the operation, licensing, and taxing and limiting the size, weight, width, length, and speed of vehicles and licensing and controlling the operations of drivers and operators of vehicles;
- Cooperate with officials designated by law to collect all state fees and revenues levied as an incident to the use or right to use the highways for any purpose;
- Require the drivers of vehicles to stop and exhibit their driver's licenses, registration cards, or documents required by law to be carried by such vehicles; to investigate traffic accidents, secure testimony of witnesses and of persons involved, and make report thereof with copy, when requested in writing, to any person in interest or his or her attorney; and
- Investigate reported thefts of vehicles and to seize contraband or stolen property on or being transported on the highways.²

Fish and Wildlife Conservation Commission

The State Constitution mandates the existence of the Fish and Wildlife Conservation Commission (FWCC).³ Section 20.331, F.S., implements the FWCC, and creates five divisions within it,⁴ as follows:

¹ Section 20.24(2)(a), F.S.

² Section 321.05(1), F.S.

³ Section 9, Art. IV, Constitution of the State of Florida.

⁴ In 1999, the FWCC was created by combining the Marine Fisheries Commission and components of the Department of Environmental Protection with the former Game and Fresh Water Fish Commission. This centralized fish and wildlife resource conservation, management, research, and enforcement into one agency, dedicated to the perpetuation and protection of Florida's saltwater, freshwater, and wildlife resources. The FWCC Division of Law Enforcement was formed from the combination of the Division of Law Enforcement of the Game and Fresh Water Fish Commission and components of the Department of Environmental Protection's Division of Law Enforcement. These individual law enforcement entities each had unique responsibilities for the enforcement of fish and wildlife resource laws as well as boating safety on the waterways under their separate jurisdictions. [2006 Legislative Bill Analysis – HB 1421, Florida Fish and Wildlife Conservation Commission, April 14, 2006.]

- Freshwater Fisheries Management;
- Marine Fisheries Management;
- Hunting and Game Management;
- Habitat and Species Conservation; and
- Law Enforcement.

The duties of the Division of Law Enforcement are to ensure enforcement of laws and rules regarding marine life and waterways.⁵ As sworn law enforcement officers, the division's officers also enforce boating laws, provide public safety services on land and water, provide search-and-rescue operations, assist in the enforcement of all general laws, and coordinate with local, state, and federal entities on law enforcement issues.⁶ Under this system, officers are authorized to address many enforcement issues concurrently. The union of previously-disparate law enforcement entities streamlines resource protection and boating safety efforts by efficiently providing a group of officers who can provide comprehensive law enforcement services to marine, freshwater, and upland resources and to the public utilizing these resources.⁷ No matter what an officer's primary objective is for a patrol activity, that officer is cross-trained, equipped, and capable to address any enforcement issue that presents itself.⁸

Section 20.331(4), F.S., creates the Boating and Waterways section (BWS) within the FWCC Division of Law Enforcement. The BWS section of the Division of Law Enforcement is empowered to manage and promote the use of state waterways for safe and enjoyable boating, including oversight and coordination of waterway markers, providing boating education, improving boating access, coordinating removal of derelict vessels, implementing economic development programs to promote boating, and coordinating the submission of state comments on marine events.⁹

Type One Transfer

Section 20.06, F.S., provides for the reorganization of executive branch agencies, or portions thereof. A type one transfer describes the process of moving an intact agency¹⁰ or department so that the agency or department becomes a unit of another agency or department.¹¹ In a type one transfer, the moving agency's powers and duties remain intact, administrative rules remain valid, and all property and personnel transfer to the receiving agency. Segregated funds are transferred in a manner that retains the relationship between program and revenue source.¹²

Limitation on Executive Branch Departments

Section 20.02(2), F.S., declares that the executive branch may not consist of more than 25 departments, exclusive of those specifically provided for or authorized in the State Constitution. There are currently 22 distinct departments created in chapter 20, F.S., including those authorized by the Constitution (the Fish and Wildlife Conservation Commission, the Department of Veterans' Affairs, and the Department of Elderly Affairs).

Proposed Changes

The bill creates a new Department of Public Safety (DPS). The DPS is made up of two divisions, transferred by type one transfer from other agencies. These two divisions are the Florida Highway

⁵ Section 20.331(7)(e), F.S.

⁶ *Id.*

⁷ *2006 Legislative Bill Analysis – HB 1421*, Florida Fish and Wildlife Conservation Commission, April 14, 2006.

⁸ *Id.*

⁹ Section 20.331(7)(e)1., F.S.

¹⁰ For purposes of Chapter 20, F.S., the term "agency" includes divisions, sections, or other units or entities of government. [s. 20.03, F.S.]

¹¹ Section 20.06(1), F.S.

¹² *Id.*

Patrol (transferred from the HSMV) and the Florida Marine Patrol (the BWS, transferred from the division of Law Enforcement at FWCC).

A majority of the bill makes conforming changes to various statutes involving the FHP. The bill also creates new sections of law regarding the Florida Marine Patrol (FMP). It grants the division powers and duties similar or identical to current powers and duties of the FHP.¹³ These statutes include provisions regarding employee qualifications, supplies and equipment, a color scheme, impersonation of officers or official vehicles, and the duties of law enforcement officers.¹⁴

With regard to the removal of the current BWS, the bill states that the number of sworn law enforcement FTE positions transferred to the new DPS “shall be one-half the number of such positions in the Fish and Wildlife Conservation Commission.” The remaining half of the FTE law enforcement positions remain with the FWCC’s Division of Law Enforcement.

The bill also addresses the number of management positions in each division. The bill amends s. 321.04, F.S., to assert that within the FHP, “management positions shall not exceed 6 percent [6%] of the total workforce.”¹⁵ It also creates s. 327.904, F.S., which asserts the same six percent management cap for the FMP.

The bill authorizes the DPS to employ boating accident investigation officers who “must complete any applicable standards adopted by the patrol including, but not limited to: cognitive testing, drug testing, polygraph testing, psychological testing, and an extensive background check, including a credit check.”

C. SECTION DIRECTORY:

Section 1 creates s. 20.60, F.S., creating the Department of Public Safety, containing the Division of the Florida Highway Patrol and the Division of the Florida Marine Patrol.

Section 2 transfers the Florida Highway Patrol to the Department of Public Safety by Type One transfer.

Section 3 transfers the Boating and Waterways Section of the Fish and Wildlife Conservation Commission’s Law Enforcement Division to the Department of Public Safety by Type One transfer.

Sections 4 – 7 make conforming changes.

Section 8 amends s. 282.1095, F.S., to include a member of the Florida Marine Patrol on the Joint Task Force on State Agency Law Enforcement Communications.

Sections 9 – 16 make conforming changes.

Section 17 amends s. 316.640, F.S., to permit officers of the Florida Marine Patrol to enforce the traffic laws of the state.

Sections 18 – 20 make conforming changes.

Section 21 amends s. 321.04, F.S., to make conforming changes, to assert that management positions within the division will not exceed six percent of the total workforce, and to provide that the Governor shall select the patrol officer assigned to the Executive Office of the Governor.

Sections 22 – 25 make conforming changes.

¹³ The new statutes are placed in a new Part II of Chapter 327, F.S. Chapter 327, F.S., currently covers “Vessel Safety,” and this title is retained for Part I of the revised chapter. The legislation directs the Division of Statutory Revision to title Part II, “Florida Marine Patrol.”

¹⁴ See fn. 10. These provisions are placed in new sections 327.901 – 327.9065, F.S.

¹⁵ Along with this change and some conforming changes, Section 21 also clarifies that the Governor, rather than the department, shall select the FHP officer assigned to the Executive Office of the Governor.

Section 26 amends s. 321.25, F.S., to make conforming changes and to permit the Florida Marine Patrol to establish training criteria for its candidates.

Section 27 directs the Division of Statutory Revision to title the existing provisions of chapter 327, F.S., as Part I – “Vessel Safety,” and to create a new Part II – “Florida Marine Patrol.”

Section 28 creates s. 327.901, F.S., providing definitions.

Section 29 creates s. 327.902, F.S., granting powers and duties to the Department of Public Safety regarding personnel matters, supplies and equipment, and authority to prescribe a color scheme.

Section 30 creates s. 327.903, F.S., prohibiting impersonation of a Florida Marine Patrol employee or vehicle.

Section 31 creates s. 327.904, F.S., providing provisions regarding personnel and to assert that management positions within the division will not exceed six percent of the total workforce.

Section 32 creates s. 327.905, F.S., providing provisions detailing the duties of Florida Marine Patrol officers.

Section 33 creates s. 327.9065, F.S., allowing the employment of boating accident investigation officers.

Sections 34 – 42 make conforming changes.

Section 43 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not explicitly create, modify, amend, or eliminate a state revenue source, but see D. FISCAL COMMENTS, below.

2. Expenditures:

The bill does not explicitly create, modify, amend, or eliminate a state expenditure, but see D. FISCAL COMMENTS, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The FWCC has opined that the fiscal impact of this legislation on the private sector potentially could be significant.¹⁶ This bill reduces the number of officers available to protect resources and safeguard commercial industry. The economic impact of hunting, freshwater fishing, saltwater fishing, wildlife

¹⁶ 2006 Legislative Bill Analysis – HB 1421, Florida Fish and Wildlife Conservation Commission, April 14, 2006.

viewing, commercial fishing, seafood processing, and the boating industry is over \$30 billion and over 339,000 jobs.¹⁷ The FWCC Division of Law Enforcement's activities and services, which are dedicated to protecting the resources of Florida and the public safety of those persons utilizing the resources of the State, enhances the ability of these industries to exist and thrive. The provisions of this bill would greatly diminish the ability of the Division to continue its current level of services.¹⁸

D. FISCAL COMMENTS:

The HSMV has stated that the FHP currently has 2,360 positions and an appropriation of \$202,181,558.¹⁹ Of these amounts, \$131,398,580 is funded from the General Revenue Fund and the remaining amount is funded from trust funds.²⁰ Additionally 85 positions funded at approximately \$6.0 million provide administrative and data processing support to the Florida Highway Patrol.²¹ The HSMV opines that if the legislation becomes law, approximately \$50 million of the amount funded from trust funds will need to be supplemented from the General Revenue Fund or other sources, "as this portion is currently funded from driver license and motor vehicle revenue sources."²²

Implementation of this legislation also will require programming modifications to the Driver License Information System. HSMV states that the cost will be absorbed within existing resources.²³

The FWCC Division of Law Enforcement currently has 902.5 FTEs and funding in the amount of \$78,864,146 (recurring), and the current number of sworn FTEs is 722.²⁴ If the bill passes, \$45,507,456 in appropriations and 380 FTEs will be transferred to the newly created department.

Additionally, the Marine Resource Conservation Trust Fund (MRCTF) would be impacted significantly by the transfer of the boating safety federal grant appropriations. These funds are deposited into the MRCTF and are utilized throughout the Division to support law enforcement activities.²⁵ The removal of these funds would negatively impact all areas of the Division of Law Enforcement.²⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

To the extent that the bill contains provisions making conforming changes, there are some grants of rulemaking implicated. These provisions are merely current law, with the current grants of authority

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 2006 DHSMV Bill Analysis, HB 1421, Department of Highway Safety and Motor Vehicles, March 6, 2006.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ 2006 Legislative Bill Analysis – HB 1421, Florida Fish and Wildlife Conservation Commission, April 14, 2006.

²⁵ *Id.*

²⁶ *Id.*

transferred to the new DPS. Pursuant to the type one transfer provisions, current rules will remain in effect.²⁷ However, there are two new grants of rulemaking authority:

- The bill grants DPS rulemaking authority to adopt Florida Marine Patrol officer training, education, suspension, and other personnel rules. The provision is nearly identical to the current s. 321.02, F.S., granting DHSMV authority to promulgate the same rules for the current Florida Highway Patrol.
- The bill allows the DPS to employ boating accident investigation officers and lists certain applicable standards such officers must meet. These standards require rulemaking, under the general grant given in the new statutes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues – Rulemaking

The intent of the grant of rulemaking authority contained in s. 327.905, F.S., appears to cover Part II in its entirety. If this is the case, the Joint Administrative Procedures Committee recommends moving the grant into a new section, or into s. 327.902, F.S., to clarify its application to the entire part.²⁸

Drafting Issues – Definition

The HSMV has expressed a concern that the bill does not specifically define what constitutes a “management position” for purposes of interpreting the six percent management cap contained in Sections 21 and 31 of the bill.²⁹

Other Comments – Potential Duplication of Efforts

The FWCC has issued the following concern regarding a potential duplication of efforts between agencies:

Losing half of its officers would cripple the ability of FWC to effectively and efficiently enforce Florida’s and federal resource conservation laws and protect the public of Florida. It would create a duplication of effort, equipment, personnel, and supervision by dividing current FWC law enforcement responsibilities between two agencies. It would create a situation where one officer would check waterborne resource users to enforce conservation laws and rules, while another officer from a separate agency would have to check the same users to enforce boating safety laws. In effect, two different officers with separate enforcement responsibilities and each with his/her own vessel and vehicle would perform the same tasks currently provided by one officer. This would be an inefficient use of personnel, equipment, and tax dollars. Other inefficiencies which would occur include: the duplication of supervisors; span of control; training; support staff; and infrastructure.

Additionally, it could foster a negative perception, not only from duplicate inspections, but also if an FWC or Department of Public Safety officer could not respond to a particular need or request for a law enforcement service because it was not part of that officer’s jurisdiction.³⁰

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

²⁷ Section 20.06(1), F.S.

²⁸ E-mail from Joint Administrative Procedures Committee, April 13, 2006.

²⁹ *2006 DHSMV Bill Analysis, HB 1421*, Department of Highway Safety and Motor Vehicles, March 6, 2006.

³⁰ *2006 Legislative Bill Analysis – HB 1421*, Florida Fish and Wildlife Conservation Commission, April 14, 2006.