

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1435 CS  
Community Affairs

Division of Emergency Management of the Department of

**SPONSOR(S):** Harrell

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1888

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N</u>	<u>Brown</u>	<u>Williamson</u>
2) <u>State Administration Appropriations Committee</u>	<u>7 Y, 0 N</u>	<u>Dobbs</u>	<u>Belcher</u>
3) <u>State Administration Council</u>	<u>9 Y, 0 N, w/CS</u>	<u>Brown</u>	<u>Bussey</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

This bill provides for a codified direct operational relationship between the Governor and the Division of Emergency Management in carrying out the responsibilities of Chapter 252, F.S., related to Emergency Management. The bill provides the division with autonomy for matters involving personnel, purchasing, and budget.

The bill appears to have no fiscal impact.

The bill is effective July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill requires the Division of Emergency Management to enter into a service agreement with the Department of Community Affairs.

#### B. EFFECT OF PROPOSED CHANGES:

##### Structure of Executive Branch

Article IV, Section 1 of the Florida Constitution vests the Governor with supreme executive power. Section 20.18, F.S., creates the Department of Community Affairs (DCA) and establishes the Division of Emergency Management (DEM) as one of the department's units.<sup>1</sup> The State Emergency Management Act<sup>2</sup> also serves as an establishing clause for the DEM. Chapter 252, F.S., tasks the DEM with coordinating emergency management efforts to ensure effective preparation and use of the state workforce, state resources, and facilities of the state and nation in dealing with any emergency that may occur.<sup>3</sup>

Statutorily, the operational and administrative chain of command typically flows from the Governor through the Secretary of the Department of Community Affairs to the Director of the Division of Emergency Management. However, under Chapter 252, F.S., the Governor is responsible for meeting the dangers presented to this state and its people by emergencies.<sup>4</sup> In the event of an emergency beyond the capabilities of local authorities, the Governor may assume direct operational control over all or any part of the emergency management functions within this state. The Governor is authorized to delegate such powers as she or he may deem prudent.<sup>5</sup>

Chapter 252, F.S., assigns responsibility to the Division of Emergency Management for maintaining a comprehensive statewide program of emergency management. This program includes:

- Preparation of a comprehensive statewide emergency management plan;
- Adopting standards and requirements for county emergency management plans;
- Ascertaining the requirements for equipment and supplies for use in an emergency;
- Coordinating federal, state, and local emergency management activities in advance of an emergency; and
- Using and employing the property, services, and resources within the state in accordance with the Florida Emergency Management Act.<sup>6</sup>

In an emergency that is beyond the capability of local authorities, the Governor determines the need to declare a state of emergency. This declaration takes the form of an Executive Order that describes the emergency condition, issues orders, assigns missions, and may delegate certain authority.<sup>7</sup>

For example, Executive Order 05-219<sup>8</sup> declared a state of emergency for Hurricane Wilma. As part of the Executive Order, the Governor designated the Director of the DEM as the State Coordinating Officer for the duration of the emergency. The Director was authorized to act as the Governor's

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<sup>1</sup> Section 20.18(2)(a), F.S.

<sup>2</sup> Chapter 252, F.S.

<sup>3</sup> Section 252.32(2), F.S.

<sup>4</sup> See generally s. 252.36, F.S.

<sup>5</sup> Section 252.36(1)(a), F.S.

<sup>6</sup> Section 252.35, F.S.

<sup>7</sup> Section 252.36, F.S.

<sup>8</sup> Available online here: [http://sun6.dms.state.fl.us/eog\\_new/eog/orders/2005/October/05-219-wilma.pdf](http://sun6.dms.state.fl.us/eog_new/eog/orders/2005/October/05-219-wilma.pdf).

authorized representative and instructed to confer with the Governor to the fullest extent possible. The Director was specifically authorized to:

- Activate the Comprehensive Emergency Management Plan;
- Invoke and administer the Statewide Mutual Aid Agreement;
- Invoke and administer the Emergency Management Assistance Compact;
- Seek direct assistance from any and all agencies of the United States Government as may be needed to meet the emergency;
- Distribute any and all supplies stockpiled to meet the emergency;
- Direct all state, regional and local government agencies, including law enforcement agencies, to identify needed personnel and place them under the direct command of the State Coordinating Officer to meet the emergency; and
- Perform other duties relating to the management of the emergency.

As a result of this and other executive orders, the Governor and the Director of DEM (acting as the State Coordinating Officer) have a direct operational link when operating under an executive order declaring an emergency.

### Proposed Changes

The bill requires the Director of the DEM to be appointed by and serve under the direct oversight of the Governor in carrying out the responsibilities of chapter 252, F.S. The bill also states that the Director is an “agency head” for all purposes.

The bill makes the DEM a budget entity separate from the DCA, with complete autonomy in matters involving personnel, purchasing, and budget while remaining an established unit of the DCA.

The bill requires the DEM to enter into a service agreement with the DCA for “professional, technological, and administrative support services.” The bill also requires the DEM to collaborate and coordinate with the department on non-emergency response matters such as recovery programs, grant programs, mitigation programs, and emergency matters relating to comprehensive plans.

#### C. SECTION DIRECTORY:

Section 1 amends s. 20.18, F.S., to operationally segregate the DEM from the DCA except for administrative purposes.

Section 2 provides an effective date of July 1, 2006.

## **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 DCA reports that the bill will have no fiscal impact, as the changes “codify the existing relationship.”<sup>9</sup>

Section 252.371, F.S., establishes the Emergency Management, Preparedness, and Assistance Trust Fund administered by the Department of Community Affairs. The DEM currently performs administration of this trust fund within the DCA. This bill does not appear to conflict with section 252.371, F.S., since the DEM will remain statutorily a unit of the DCA. Further, the bill specifies that the DEM will collaborate and coordinate with the DCA on such matters as grant programs. Emergency management grants and aids to local governments and non-state entities as well as other related programs are funded through this trust fund.

### 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:

The bill provides that the division director of the Division of Emergency Management will be appointed by the Governor, and will be an agency head for all purposes. Currently, the division director is employed by the Secretary of the Department of Community Affairs, who is the head of that department. Further, the bill provides that the division will no longer be subject to the control, supervision, or direction of the department. If this change creates an independent entity of the executive branch, it could be interpreted as altering the division director’s position from an “employee” to an “officer.” If this is the case, the provisions of Art. IV, s. 6 of the State Constitution may apply. That section provides:

All functions of the executive branch of state government shall be allotted among not more than twenty-five departments...The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, *except: (a) When provided by law, confirmation by the senate or the approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office...* [emphasis added.]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>9</sup> 2006 Bill Policy Analysis, HB-1435, Florida Department of Community Affairs.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On April 21, 2006, the State Administration Council adopted an amendment:

- Clarifying the separation between the Division of Emergency Management and the Department of Community Affairs, in regards to budget, purchasing, and other matters; and
- Specifically stating that the head of the Division is considered an agency head for all purposes.

The bill was reported favorably, with the amendment.