

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 1888

SPONSOR: Governmental Oversight and Productivity Committee and Senator Fasano

SUBJECT: Emergency Management Division Director/DCA

DATE: April 19, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pardue	Skelton	DS	Favorable
2.	Vickers	Yeatman	CA	Favorable
3.	Rhea	Wilson	GO	Fav/CS
4.			TA	
5.				
6.				

I. Summary:

Under current law, the Division of Emergency Management is a unit of the Department of Community Affairs. As the division is a unit of the department, the division director is employed by the agency head, a department secretary.

The committee substitute creates the division as an independent agency that is a separate budget entity that is not under the control, supervision, or direction of the department. Further, the committee substitute clearly establishes that the division has an agency head, the director, who is appointed by, and serves at the pleasure of, the Governor. The division is required to enter into a service agreement with the department for professional, technological, and administrative support services. Further, the division is required to collaborate and coordinate with the department on nonemergency response matters.

This bill substantially amends section 20.18 of the Florida Statutes.

II. Present Situation:

Organization Structure of the Executive Branch - Article IV of the State Constitution establishes the executive branch of state government. Section 1 of that article provides that the "... supreme executive power shall be vested in a governor." Nevertheless, s. 4, Art. I of the State Constitution establishes the cabinet and requires the Governor to share some executive powers with three elected cabinet officers. The constitution provides for an attorney general, a chief financial officer and a commissioner of agriculture. In addition to the constitutional powers provided to each of these elected cabinet officers, cabinet officers "... shall exercise such powers and perform such duties as may be prescribed by law."

Chapter 20, F.S., provides for the organizational structure of the executive branch. Section 20.02 (1), F.S., provides:

The State Constitution contemplates the separation of powers within state government among the legislative, executive, and judicial branches of the government. The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

Article IV, s. 6 of the State Constitution requires all functions of the executive branch of state government to be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in the State Constitution. Section 20.02(2), F.S., provides that within constitutional limitations, the agencies that compose the executive branch must be consolidated into no more than 25 departments, exclusive of those specifically provided for or authorized in the State Constitution, consistent with executive capacity to administer effectively at all levels. Structural reorganization “. . . must be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to public needs.”¹

Further, that section requires the administration of each department, unless otherwise provided in the State Constitution, to 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. This section also provides that, when provided by law, confirmation by the Senate or the approval of three members of the Cabinet is required for appointment to or removal from any designated statutory office.

Section 20.04, F.S., provides that the executive branch of state government is to be structured as follows:

- The department is the principal administrative unit of the executive branch.
- The principal unit of a department is the “division,” which is headed by a “division director.”
- The principal unit of a division is a “bureau,” which is headed by a “bureau chief.”
- The principal unit of a bureau is a “section,” which is headed by an “administrator.”
- The principal unit of a section is a “subsection,” which is headed by a “supervisor.”

While ch. 20, F.S., establishes the structure of the executive branch, it provides numerous exceptions to that structure. Further, the provisions of the chapter are not binding on future sessions of the Legislature, except for those parts that are required by the State Constitution.

The Division of Emergency Management - Section 20.18, F.S., provides for the Department of Community Affairs. Paragraph (a) of subsection (2) of that section establishes the Division of

¹ Section 20.02(3), F.S.

Emergency Management (the “division”) as a unit of the department. Chapter 252, F.S., known as the Florida Emergency Management Act, establishes the powers and duties of the division. The division is tasked with coordinating emergency management efforts so that the most effective preparation and use may be made of the workforce, resources, and facilities of the nation in dealing with any emergency that may occur.²

The current operational and administrative chain of command provided in statute follows the standard organizational requirements established in ch. 20, F.S. The Governor appoints a Secretary of the Department of Community Affairs. The secretary, who is confirmed by the Senate, is the agency head. The secretary as the agency head employs a director of the Division of Emergency Management.

Under chapter 252, F.S., the Governor is responsible for meeting the dangers presented to this state and its people by emergencies. 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.³

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.⁴

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.

For example, Executive Order 05-219 declared a state of emergency for Hurricane Wilma. As part of the Executive Order, the Governor designated the Director of the Division of Emergency Management as the State Coordinating Officer for the duration of the emergency. The division director was authorized to act as the Governor’s Authorized Representative and instructed to confer with the Governor to the fullest extent possible.

The division director was authorized to:

² Section 252.32 (2), F.S.

³ Section 252.36 (1)(a), F.S.

⁴ Section 252.35, F.S.

- activate the Comprehensive Emergency Management Plan;
- invoke and administer the Statewide Mutual Aid Agreement;
- invoke and administer the Emergency Management Assistance Compact;
- grant authority to 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.

In current practice, the Governor and the division director, acting as the State Coordinating Officer, have a direct operational link in managing an emergency.

III. Effect of Proposed Changes:

Currently, the division director of the Division of Emergency Management, which is a unit of the Department of Community Affairs, is employed by the agency head, the department secretary.

The committee substitute creates the division as an independent agency that is a separate budget entity that is not under the control, supervision, or direction of the department. Further, the committee substitute clearly establishes that the division has an agency head, the director, who is appointed by, and serves at the pleasure of, the Governor. The division is required to enter into a service agreement with the department for professional, technological, and administrative support services. Further, the division is required to collaborate and coordinate with the department on nonemergency response matters.

The bill provides for an effective date of July, 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Section 252.371, F.S., establishes the Emergency Management, Preparedness, and Assistance Trust Fund administered by the Department of Community Affairs. The Division of Emergency Management currently performs administration of this trust fund within the department.

Since the division is created as an independent agency, like the Division of Administrative Hearings is created as a separate entity apart from the Department of

Management Services but is housed within it, there may be a conflict with s. 252.371, F.S., since the division is no longer under the control, supervision, or direction of the department. The bill specifies that the division will collaborate and coordinate with the department 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.

D. Other Constitutional Issues:

The bill provides that the division director of the Division of Emergency Management, of the Department of Community Affairs, will be appointed by the Governor. Currently, the division director is *employed* by the Secretary of the Department of Community Affairs, who is the head of that department. Further, the division is created as a separate budget entity and is not subject to the control, supervision, or direction of the Department of Community Affairs in matters involving personnel, purchasing, and budget.

In effect, this bill re-creates the Division of Emergency Management as a separate independent entity of the executive branch housed within the Department of Community Affairs.

Further, as the division director of this independent entity is directly appointed by the Governor and will exercise powers more akin to that of an “officer” than an employee, the provisions of Art. IV, s. 6 of the State Constitution apply. That section provides:

All functions of the executive branch of state government shall be allotted among not more than twenty-five departments, exclusive of those specifically provided for or authorized in this constitution. The administration of each department, unless otherwise provided in this constitution, shall be place 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 approval of three members of the cabinet shall be required for appointment to or removal from any designated statutory office [emphasis added]. . .*

This bill does not require confirmation by the Senate of the officer appointed to head the independent division. Typically, agency heads of independent agencies created within another agency are subject to confirmation by the Senate or the cabinet.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill should have little fiscal impact. The department will continue to provide professional, technical, and administrative support services to the division. No additional requirements for support staff or facilities have been identified for what is essentially a codification of existing operational relationships with some additional autonomy enhancements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
