

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7061 PCB CRJ 17-01 Community Highway Safety Pilot Program
SPONSOR(S): Criminal Justice Subcommittee, Gonzalez
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 2 N	Merlin	White
1) Transportation & Tourism Appropriations Subcommittee	10 Y, 5 N	Cobb	Davis
2) Judiciary Committee			

SUMMARY ANALYSIS

In Florida, a County Sheriff is a state constitutional officer, elected to a four-year term, whose powers and duties are prescribed by statute. Generally, a Sheriff is considered the chief law enforcement officer of a county and has countywide jurisdiction to execute warrants, serve process, and make arrests. In contrast, the Florida Highway Patrol ("FHP") within the Department of Highway Safety and Motor Vehicles ("DHSMV") was created in statute and has statewide jurisdiction for its duties, as described in ch. 321, F.S.

The bill creates s. 321.025, F.S., to establish the Community Highway Safety Pilot Program (Pilot Program) within the DHSMV to assess the viability and effectiveness of transferring duties from FHP to the Sheriffs. The bill provides that the Pilot Program shall be operated in Pinellas and Polk Counties and implemented by contract. The bill:

- Authorizes, but does not require, the Sheriffs to enter into a contract with FHP.
- Requires FHP to enter into a contract with the Sheriffs if requested to do so.

The bill provides that if the parties enter into a contract, the contract must specify, at a minimum the:

- Duties to be performed by the Sheriff within the county's boundaries that are currently performed by FHP; and
- The amount to be paid by FHP to the Sheriff for the performance of duties delineated in the contract.

The bill provides that as a condition of each contract:

- The Sheriff must agree to employ FHP troopers who serve within the county unless, at the trooper's discretion, the trooper chooses to relocate and remain with FHP or chooses to pursue other employment opportunities.
- Payments to a Sheriff must be less than FHP's cost to provide the same services. The amount paid pursuant to the contract may not exceed \$2,800,117 annually for Pinellas County and \$3,167,447 annually for Polk County.
- Property and fixed capital outlay under the control of FHP may not be leased or otherwise transferred to a Sheriff.

The bill creates an appropriation category entitled, "Community Highway Safety Pilot Program," and provides that, upon executing a contract, FHP shall submit, and the Governor shall recommend the approval of one or more budget amendments to transfer from FHP the amount of funds obligated from the FHP to a county into the Community Highway Safety Pilot Program appropriation category.

The bill provides that the Pilot Program expires on July 1, 2019, unless reviewed and saved from repeal by the Legislature.

The bill will have both indeterminate positive and negative fiscal impacts to state and local government expenditures and revenues. See fiscal section for additional detail.

The bill provides an effective date of July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7061a.TTA

DATE: 3/22/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Constitutional and Statutory Authority of County Sheriff

In Florida, the “[S]heriff is a constitutional officer and a county administrative officer whose powers and duties are prescribed by statute like other county administrative officers, and he possesses such authority as has been expressly granted by statute or is necessarily implied in order to carry out some function expressly imposed or authorized by statute.”¹

Pursuant to the Florida Constitution, a County Sheriff is elected for a term of four years.² Sixty-six of Florida's 67 counties have elected Sheriffs as their chief law-enforcement officers.³ Chapter 30, F.S., is the corresponding chapter pertaining to the County Sheriff. Section 30.072(5), F.S., provides that the Sheriff is “the constitutional officer elected in accordance with this chapter.”⁴ Section 30.072(2), F.S., in turn, provides that the Sheriff can appoint a deputy sheriff, who is “a law enforcement officer . . . certified under chapter 943.”⁵

A Sheriff has countywide jurisdiction as set forth in s. 30.15, F.S. The powers, duties, and obligations⁶ of the Sheriffs include:

- Executing all process of the Supreme Court, circuit court, county court, and board of county commissioners, to be executed in their counties;
- Executing such other writs, processes, warrants, and other papers directed to them, as may come to their hands to be executed in their counties;
- Attending all terms of the circuit court and county court held in their counties;
- Executing all orders of the board of county commissioners of their counties, for which services they shall receive such compensation, out of the county treasury, as said boards may deem proper;
- Being conservator of the peace in their counties;
- Suppressing tumults, riots, and unlawful assemblies in their counties with force and strong hand when necessary;
- Apprehending, without warrant, any person disturbing the peace, and carrying that person before the proper judicial officer, that further proceedings may be had against him or her according to law;
- Having authority to raise the power of the county and command any person to assist them, when necessary, in the execution of the duties of their office;
- Being, ex officio, timber agents for their counties; and
- Performing such other duties as may be imposed upon them by law.

¹ 06-06 Fla. Op. Att’y Gen. (2006).

² FLA. CONST. art. VIII, s. 1(d) (“There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office.”); *see also* FLA. CONST. art. V, s. 3(c) (providing that the Marshal of the Florida Supreme Court “shall have the power to execute the process of the court throughout the state, and in any county may deputize the sheriff or a deputy sheriff for such purpose.”); FLA. CONST. art. V, s. 4(c) (providing similar authority for the marshals of the district courts of appeal to deputize a sheriff or sheriff’s deputy for such a purpose).

³ The sole exception is Miami-Dade County, which appoints a Director to the Miami-Dade Police Department. *See* website for the Florida Sheriff’s Association, available at <https://www.flsheriffs.org/sheriffs/directory/> (last viewed Feb. 13, 2017). The current Director of the Miami-Dade Police Department is Juan J. Perez. *See* Website for the Miami-Dade Police Department, available at <http://www.miamidadepolice.gov/biographies/police.asp> (last viewed Mar. 2, 2017).

⁴ s. 30.072(5), F.S.

⁵ s. 30.072(2), F.S.

⁶ Although ch. 30, F.S., is the chapter generally pertaining to County Sheriffs, section 30.15, F.S. specifically deals with the powers, duties, and obligations of that position.

Florida Highway Patrol

Unlike the Sheriffs, the Florida Highway Patrol (“FHP”) was created in statute, and its members are not state constitutional officers. Specifically:

- The authority and responsibility afforded to the Director of FHP is defined in s. 321.02, F.S.
- The functions, principles and duties of FHP members are defined in s. 321.05, F.S.
- FHP is a division of the Department of Highway Safety and Motor Vehicles (“DHSMV”), whose Executive Director⁷ is accountable to the Governor and cabinet, as provided for in Ch. 20, F.S.⁸

FHP has statewide territorial jurisdiction as set forth in s. 321.05, F.S. The duties, functions, and powers of patrol officers (“troopers”) include:

- Being “conservators of the peace” and “law enforcement officers of the state.” This includes:
 - The common-law right to arrest a person who, in the presence of the trooper, commits a felony, or an affray, or a breach of the peace constituting a misdemeanor;
 - The “full power” to bear arms;
 - The authority to apprehend a person who commits an unlawful act over which FHP has jurisdiction and deliver that person to the Sheriff;
 - The same protections and immunities as other law enforcement officers (“LEOs”); and
 - The authority to apply for, serve, and execute search warrants, arrest warrants, *capias*, and other process of the court.
- Patrolling state highways and regulating, controlling, and directing traffic movements thereon;
- Enforcing all laws that regulate vehicles, traffic, travel, and public safety on public highways and that protect the public highways and public property thereon.
- Apprehending fugitives from justice;
- Investigating traffic accidents and reported thefts of vehicles;
- Seizing contraband or stolen property on or being transported on the highways.
- Assisting other LEOs to quell mob riots, guard prisoners, and police disaster areas; and
- Exercising on a statewide basis the same arrest authority granted to local and other state LEOs in ch. 901, F.S.⁹

Currently, section 321.02, F.S., provides the authority and responsibility that is afforded to the Director of FHP. Section 321.02, F.S., also requires FHP to:

- Set up and promulgate rules and regulations by which personnel are to be examined, employed, trained, located, suspended, reduced in rank, discharged, recruited, paid and pensioned, subject to civil service provisions;
- Enter into contracts to make available property for the placement of new facilities by wireless providers of mobile services;
- Purchase, sell, trade, rent, lease and maintain all necessary equipment, uniforms, motor vehicles, communication systems, housing facilities, office space, and perform any other acts necessary for the proper administration and enforcement of ch. 321, F.S.;
- Prescribe a distinctive uniform and emblem to be worn by its members; and
- Prescribe distinctive colors for use on its motor vehicles and motorcycles.

⁷ The Executive Director of DHSMV is currently Terry L. Rhodes. See <https://www.flhsmv.gov/about/directors-welcome/> (last viewed Mar. 3, 2017). The Director of the Florida Highway Patrol is Colonel Gene Spaulding. See <https://www.flhsmv.gov/about/department-overview/> (last viewed Mar. 3, 2017).

⁸ See Florida Highway Patrol (“FHP”) Policy Manual 4.01, Organizational Structure, Rev. Dec. 17, 2015, available at <https://www.flhsmv.gov/fhp/Manuals/0401.pdf> (last viewed Feb. 14, 2017).

⁹ s. 321.05, F.S.

Effect of the Bill

The bill creates s. 321.025, F.S., to establish the Community Highway Safety Pilot Program (“Pilot Program”) for the purpose of assessing the viability and effectiveness of transferring duties from FHP to the Sheriffs.

The bill provides that the Pilot Program is to be operated in Pinellas and Polk Counties and implemented by contract. The bill:

- Authorizes, but does not require, the Sheriffs of Pinellas and Polk Counties, to enter into a contract with FHP.
- Requires FHP to enter into a contract with the Sheriffs of those counties if requested to do so.

The bill provides that if FHP and the Sheriffs enter into a contract, the contract must specify, at a minimum:

- The duties to be performed by the Sheriff within the county’s boundaries that are currently performed by FHP. The duty to patrol roadways within the county and investigate traffic accidents occurring within the county must be transferred from FHP to the Sheriff of the county, but only within the boundaries of the Sheriff’s respective county; and
- The amount to be paid by FHP to the Sheriff for the performance of duties delineated in the contract.

The bill provides that as a condition of each contract:

- The Sheriff must agree to employ FHP troopers who serve within the county unless, at the trooper’s discretion, the trooper chooses to relocate and remain with FHP or chooses to pursue other employment opportunities.
- Payments to a Sheriff must be less than FHP’s cost to provide the same services. The amount paid pursuant to the contract may not exceed \$2,800,117 annually for Pinellas County and \$3,167,447 annually for Polk County.
- Property and fixed capital outlay under the control of FHP may not be leased or otherwise transferred to a Sheriff.

The bill creates an appropriations category entitled, “Community Highway Safety Pilot Program.” The bill provides that upon executing a contract, FHP shall submit, and the Governor shall recommend the approval of one or more budget amendments to transfer from the Salaries and Benefits appropriation in FHP the amount of funds obligated from the FHP to a county for a contract signed into the Pilot Program appropriation category.

The bill provides that an amendment that transfers appropriations from the Salaries and Benefits appropriation category shall place a commensurate number of full-time equivalent positions in reserve. Such amendments shall be subject to the notice, review, and objection provisions of s. 216.177, F.S., pertaining to appropriations acts.

The bill provides that the Pilot Program expires on July 1, 2019, unless reenacted by the Legislature.

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 321.02, F.S., pertaining to powers and duties of department, highway patrol.

Section 2. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

The bill limits the amount of contractual payment to \$2,800,117 annually for Pinellas County and \$3,167,447 annually for Polk County¹⁰. The bill provides that if the Sheriff seeks to contract with the department under the pilot program, the Sheriff must agree to employ any officer of FHP currently serving in the county; however, officers may choose to relocate and remain with FHP or pursue other employment opportunities at their discretion. Because the number of FHP members who would choose to relocate, as well as DHSMV's potential contractual obligation is unknown at this time, the extent of this potential impact is indeterminate but may not exceed a combined \$5,967,564 for both counties. However, depending on the number of troopers who choose to become employed by the Sheriff under contract, the department should experience a decrease in ancillary costs for items such as vehicles, equipment, fuel, and other necessary expenditures associated with the duties of FHP. These impacts are also indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill limits the amount of contractual payment to \$2,800,117 annually for Pinellas County and \$3,167,447 annually for Polk County.

2. Expenditures:

While the bill provides that DHSMV would be contractually obligated to the county for personnel costs, there are other ancillary costs associated with the duties of FHP. The bill does not provide for costs related to administrative overhead, equipment, vehicles, nor additional training that might otherwise be covered by the department. In the event that expenditures must be made for the aforementioned reasons, there could be a negative fiscal impact to county expenditures. This impact is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to DHSMV, in the event that fewer law enforcement officers are available in the two counties, there may be fewer citations issued, resulting a negative fiscal impact to state revenues, and either county's revenues. Because we cannot predict the exact terms of either contract, nor the impact of future decisions by either county or current FHP members serving in either county, the extent of this impact is unquantifiable.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹⁰ Salary and benefits figures are based on People First Data, the statewide personnel system, as of February 1, 2017.

1. Applicability of Municipality/County Mandates Provision: The 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: This bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.