

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: HB 5401

INTRODUCER: Agriculture and Natural Resources Appropriations Subcommittee and Representative Raschein

SUBJECT: Department of Environmental Protection

DATE: April 10, 2019 **REVISED:** _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Reagan</u>	<u>Kynoch</u>	<u>AP</u>	Favorable

I. Summary:

HB 5401 creates the Division of Law Enforcement within the Department of Environmental Protection (DEP), which will employ state law enforcement officers.

The bill requires the DEP and the Fish and Wildlife Conservation Commission (FWC) to develop a new memorandum of agreement detailing the respective responsibilities of the two agencies, with regard to at least all of the following:

- Support and response for oil spills, hazardous spills, and natural disasters.
- Law enforcement patrol and investigative services for all state-owned lands managed by the DEP.
- Law enforcement services, including investigative services, for all criminal law violations of chapters 161, 258, 373, 376, 377, 378, and 403, F.S.
- Enforcement services for civil violations of the DEP's administrative rules related to all of the following program areas:
 - The Division of Recreation and Parks.
 - The Office of Coastal and Aquatic Managed Areas.
 - The Office of Greenways and Trails.
- Current and future funding, training, or other support for positions and equipment being transferred from the FWC to the DEP that are funded through any trust fund.

As determined by the new memorandum of agreement, the bill transfers the primary powers and duties of the FWC with regard to investigating certain environmental crimes and enforcing related laws to the DEP. The bill states that the FWC will retain law enforcement authority over the patrol of state-owned land managed by the DEP.

Senate Bill 2500, Eng., the Senate's 2019-2020 General Appropriations Bill transfers 19 full time employees and \$1,991,722 in trust fund budget authority from the FWC to the DEP. There may be additional, indeterminate negative costs associated with this transfer to the DEP.

The bill takes effect July 1, 2019.

II. Present Situation:

Environmental Law Enforcement Organizational Structure

The DEP is Florida's lead agency for environmental management and stewardship.¹ The DEP's activities are primarily divided into three areas: land and recreation, regulatory programs, and ecosystem restoration.² There are currently eight divisions established within the DEP.³

Currently, the DEP does not have any law enforcement officers. The DEP previously had a Division of Law Enforcement.⁴ This division was responsible for statewide environmental law enforcement, providing law enforcement services to Florida's state parks and trails, and providing assistance for disasters such as hurricanes or chemicals spills.⁵ This division oversaw four bureaus: Emergency Response, Criminal Investigations, Park Police, and the Office of Training and Professional Standards.⁶

The FWC is authorized to exercise regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life, and in these areas the FWC's staff is authorized to conduct management, research, and enforcement.⁷ The FWC currently has a Division of Law Enforcement with 1,051 members, including 853 sworn personnel, operating in six regions throughout the state.⁸ The FWC's Division of Law Enforcement has broad areas of responsibility including enforcing laws that protect Florida's wildlife and habitats, conducting environmental crime investigations, and protecting the public and environment from illegal environmental violations.⁹

In 2011, the Legislature created a Law Enforcement Consolidation Task Force.¹⁰ The task force was directed to evaluate any duplication of law enforcement functions throughout state government and identify any functions that are appropriate for possible consideration.¹¹ If the task force concluded that any consolidation of state law enforcement was appropriate then recommendations and a plan would be submitted.¹² In December of 2011, the task force recommended integrating the entire DEP Division of Law Enforcement into the Division of Law

¹ Section 20.255, F.S.; DEP, *About DEP*, <https://floridadep.gov/about-dep> (last visited Mar. 22, 2019).

² *Id.*

³ Section 20.255, F.S.; see DEP, *Divisions*, <https://floridadep.gov/divisions> (last visited Mar. 22, 2019).

⁴ DEP, *DEP Law Enforcement Personnel Awarded for Outstanding Performance and Commitment to the Environment*, <https://content.govdelivery.com/accounts/FLDEP/bulletins/22db55> (last visited Mar. 22, 2019).

⁵ *Id.*

⁶ *Id.*

⁷ FLA. CONST. art. IV, s. 9.

⁸ Section 20.331, (4)(a)4., F.S.; FWC, *What We Do*, <https://myfwc.com/about/inside-fwc/le/what-we-do/> (last visited Mar. 22, 2019).

⁹ Section 20.331, (7)(e), F.S.; FWC, *What We Do*, <https://myfwc.com/about/inside-fwc/le/what-we-do/> (last visited Mar. 22, 2019).

¹⁰ Ch. 2011-66, s. 31, Laws of Fla.

¹¹ *Id.*

¹² *Id.*

Enforcement within the FWC.¹³ The reasons for the recommendation included overlapping duties, cost efficiencies and reductions, and enhanced recovery and response times.¹⁴

In 2012, the Legislature transferred all powers, duties, functions, records, offices, personnel, property, pending issues and existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds relating to the DEP's Division of Law Enforcement, excluding the Bureau of Emergency Response, to the FWC's Division of Law Enforcement through a type two transfer.¹⁵ The DEP was also required to transfer to the FWC a number of administrative, auditing, inspector general, attorney, and operational support positions proportional to the DEP's Division of Law Enforcement being transferred.¹⁶ The legislation required the DEP and the FWC to develop a memorandum of agreement detailing the responsibilities of the FWC to the DEP regarding law enforcement, emergency response, and funding.¹⁷

The DEP and the FWC have a memorandum of agreement identifying the responsibilities of the FWC with regard to the DEP. The FWC provides law enforcement services for the DEP. The DEP transfers funds to the FWC to compensate for these services.

In 2018, the following appropriations were made to the FWC's Marine Resources Conservation Trust Fund or State Game Trust Fund for law enforcement:

- \$11,310,256 from the Coastal Protection Trust Fund
- \$1,991,722 from the Inland Protection Trust Fund
- \$2,822,599 from the Solid Waste Management Trust Fund.¹⁸

In January of 2019, Governor DeSantis issued Executive Order 2019-12.¹⁹ The order directed the DEP to take all necessary actions to move the Environmental Crimes Enforcement Unit from the FWC to the DEP, to align resources focused on environmental protection and ensure strong enforcement of Florida's environmental laws.²⁰

III. Effect of Proposed Changes:

Section 1 transfers the primary powers and duties of the FWC with regard to the investigation of certain environmental crimes and the enforcement of related laws to the DEP, as specified in the memorandum of agreement developed under the bill. The bill states that the FWC will retain law enforcement authority over the patrol of state-owned lands managed by the DEP, and the FWC will coordinate with the DEP in that regard.

¹³ Law Enforcement Consolidation Task Force, *Task Force Report Pursuant to SB 2160 Enacted by the 2011 Legislature*, 5 (Dec. 21, 2011), available at <https://www.flhsmv.gov/lectaskforce/LECTFReport.pdf> (last visited Mar. 22, 2019).

¹⁴ *Id.*

¹⁵ Ch. 2012-88, Laws of Fla.; see s. 20.06(2), F.S.; see DEP, *Office of Emergency Response*, <https://floridadep.gov/oer> (last visited Mar. 22, 2019).

¹⁶ Ch. 2012-88, Laws of Fla.

¹⁷ *Id.*

¹⁸ Ch. 2018-9, Special Appropriation 1536, Laws of Fla.

¹⁹ Office of the Governor, *Executive Order Number 19-12* (2019), available at https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf (last visited Mar. 22, 2019).

²⁰ *Id.* at 5.

The bill requires the FWC and the DEP to develop a new memorandum of agreement detailing the respective responsibilities of the FWC and the DEP with regard to at least all of the following:

- Support and response for oil spills, hazardous spills, and natural disasters.
- Law enforcement patrol and investigative services for all state-owned lands managed by the DEP.
- Law enforcement services, including investigative services, for all criminal law violations of chapters 161, 258, 373, 376, 377, 378, and 403, F.S.
- Enforcement services for civil violations of the DEP's administrative rules related to all of the following program areas:
 - The Division of Recreation and Parks.
 - The Office of Coastal and Aquatic Managed Areas.
 - The Office of Greenways and Trails.
- Current and future funding, training, or other support for positions and equipment being transferred from the FWC to the DEP, which are funded through any trust fund.

Section 2 requires that all of the personnel and equipment assigned to the DEP's Office of Emergency Response be reassigned to the DEP's Division of Law Enforcement.

Section 3 requires the Secretary of the DEP and the Executive Director of the FWC to each appoint two staff members to a transition advisory working group to review the administrative rules promulgated by the DEP and the FWC to identify any rules that must be amended to reflect the changes made by the bill.

Section 4 requires that, notwithstanding ch. 60L-34 F.A.C., or any law to the contrary, employees transferred from the FWC to fill positions transferred to the DEP shall retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balance. The bill requires that the employees retain their current position status, including permanent status, upon transfer to the DEP.

Section 5 amends s. 20.255, F.S., which establishes the organizational structure of the DEP. The bill adds the Division of Law Enforcement to the list of the DEP's divisions. The bill states that law enforcement officers of the DEP, who meet the minimum qualification requirements for a law enforcement officer in s. 943.13, F.S., are constituted law enforcement officers of the state with full power to investigate and arrest for any violation of the laws of the state and the rules of the DEP and the Board of Trustees of the Internal Improvement Trust Fund. The general laws applicable to investigations, searches, and arrests by peace officers of the state apply to such law enforcement officers.

Section 6 amends s. 258.004, F.S., which establishes the duties of the DEP's Division of Recreation and Parks. The bill requires that ch. 258, F.S., State Parks and Preserves, be enforced by the DEP's Division of Law Enforcement and its officers, and by the FWC's Division of Law Enforcement and its officers.

Section 7 amends s. 258.008, F.S., which establishes the fines and penalties for violating rules adopted under ch. 258, F.S. The bill requires that fines paid for violations of rules adopted under

ch. 258, F.S., will go into either the FWC's State Game Trust Fund or the DEP's State Park Trust Fund, "as applicable".

Section 8 amends s. 258.501, F.S., by authorizing "officers" of the DEP to enforce certain DEP rules.

Section 9 amends s. 282.709, F.S., which authorizes a statewide radio communications system to serve state and local law enforcement units. The bill requires that the Secretary of the DEP appoint a representative of the DEP's Division of Law Enforcement to serve as a member of the Joint Task Force on State Agency Law Enforcement Communications, which advises on agency needs relating to the planning, designing, and establishment of the statewide communication system.

Section 10 amends s. 316.640, F.S., which vests authority for the enforcement of Florida's traffic laws. The bill authorizes the DEP's Division of Law Enforcement to enforce all of the traffic laws of the state on all of the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle.

Section 11 amends s. 376.3071, F.S., which establishes the Inland Protection Trust Fund and programs for its use. The bill provides that when the DEP determines that incidents of inland contamination related to the storage of petroleum or petroleum products may pose a threat to the public health, safety, welfare, water resources, or the environment, the DEP is required to spend available money from the Inland Protection Trust Fund to provide for enforcement of related laws by the FWC and the DEP. The bill authorizes, but does not require, the DEP to disburse money to the FWC for this purpose.

Section 12 amends s. 403.413, F.S., which is Florida's litter law. The bill changes the section's definition of "law enforcement officer" to include any officer of the DEP.

Section 13 amends s. 784.07, F.S., which establishes the penalties for assault or battery of law enforcement officers. The bill expands the section's definition of law enforcement officer to include law enforcement personnel of the DEP.

Section 14 amends s. 843.08, F.S., which establishes penalties for falsely impersonating or pretending to be a law enforcement officer. The bill expands the scope of the section to include officers of the DEP.

Section 15 amends s. 843.085, F.S., which prohibits the unlawful use of badges or indicia of authority. The bill prohibits wearing or displaying any item containing the words "Department of Environmental Protection Officer" with the intent to mislead or cause another person to believe that he or she is a member of the agency or is authorized to wear or display the item. The bill prohibits a person from owning or operating a vehicle marked or identified by the words "Department of Environmental Protection Officer." The bill prohibits a person from selling, transferring, or giving away an authorized badge bearing the words "Department of Environmental Protection Officer." Violation of any of these prohibitions is a misdemeanor of the first degree. The bill provides exceptions for fraternal, benevolent, or labor organizations using the words.

Section 16 amends s. 870.04, F.S., and authorizes an officer or agent of the DEP to go among people that are rioting or tumultuously assembled and command those people in the name of the state to immediately and peaceably disperse.

Section 17 amends s. 932.7055, F.S., which determines the disposition of liens and property when a seizing agent has obtained a judgement granting forfeiture. The bill provides that if the seizing agency is the DEP then proceeds accrued pursuant to the Florida Contraband Forfeiture Act must be deposited into one of five trust funds, as specified in the statute under which the violation occurs:

- The Internal Improvement Trust Fund;
- The Water Quality Assurance Trust Fund;
- The Inland Protection Trust Fund;
- The Coastal Protection Trust Fund; or
- The Solid Waste Management Trust Fund.

Section 18 reenacts s. 790.166(8)(a), F.S., relating to an exclusion from the definition of weapons of mass destruction for devices or instruments lawfully used by state law enforcement.

Section 19 states that the bill shall take effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The separation of powers doctrine prevents the Legislature from delegating its constitutional duties.²¹ Legislative power involves the exercise of policy-related discretion over the content of law.²² The Florida Supreme Court, in *Askew v. Cross Key Waterways*, provided a framework for measuring the constitutionality of legislative

²¹ *Florida State Bd. Of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

²² *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719, 720-721 (Fla. 1937).

power delegations.²³ The court adopted a formal interpretation of the delegation of powers doctrine. Where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine. However, when legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law.²⁴

Until such time as the FWC and the DEP create a new memorandum of agreement there are many outstanding questions regarding the size and role of the DEP's new Division of Law Enforcement.

Although while the bill itself does not answer these questions, both the Senate's and House's proposed budgets for Fiscal Year 2019-2020 anticipate a transfer of 19 full-time equivalent positions with an approved salary rate of \$1,076,218 and other associated financial transfers. Furthermore, the bill is drafted in many ways to reverse the transfer of the DEP's law enforcement functions by Ch. 2012-88, L.O.F. Those provisions were similar to the provisions set out in this bill, and that transfer was in part effectuated by a memorandum of agreement analogous to the one that the DEP and the FWC are directed to carryout in this bill. Therefore, there may be enough context to provide adequate legislative guidance for this to be a constitutional delegation.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a new division of law enforcement within the DEP and adds significant new duties and responsibilities to the DEP.

The FWC's bill analysis states that revenues collected in the Inland Protection Trust Fund currently provide for the functions described in the bill.²⁵ The FWC's analysis states that

²³ 372 So.2d 913 (Fla. 1978).

²⁴ *Id.* at 918-19; *see also Conner v. Joe Hatton, Inc.*, 216 So.2d 209, 211 (Fla. 1968) ("[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be.").

²⁵ FWC, 2019 Agency Legislative Bill Analysis, *Senate Bill (SB) 1502*, 5 (2019) (on file with the Senate Committee on Environment and Natural Resources).

the costs for the functions described in the bill are covered by the FWC's base budget and that those expenditures would be made by the DEP.²⁶

Senate Bill 2500, Eng., the Senate's 2019-2020 General Appropriations Bill, transfers 19 full time employees and \$1,991,722 in trust fund budget authority from the FWC to the DEP.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.255, 258.004, 258.008, 258.501, 282.709, 316.640, 376.3071, 403.413, 784.07, 843.08, 843.085, 870.04, and 932.7055.

This bill reenacts section 790.166 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁶ *Id.*

²⁷ Senate Bill 2500, Eng., the Senate's 2019-2020 General Appropriations Bill, Specific Appropriations 1782 through 1787 and House Bill 5001, Eng., the House's 2019-2020 General Appropriations Bill, Specific Appropriations 1782 through 1787.