

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5401 PCB ANR 19-01 Department of Environmental Protection
SPONSOR(S): Agriculture & Natural Resources Appropriations Subcommittee, Raschein
TIED BILLS: **IDEN./SIM. BILLS:** SB 1502

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|-----------|---------|--|
| Orig. Comm.: Agriculture & Natural Resources Appropriations Subcommittee | 11 Y, 0 N | White | Pigott |
| 1) Appropriations Committee | 23 Y, 0 N | White | Pridgeon |

SUMMARY ANALYSIS

The Department of Environmental Protection (department) does not currently employ sworn law enforcement officers. The Florida Fish and Wildlife Conservation Commission (commission) provides law enforcement activities for the department. The department transfers funding to the commission to compensate for these law enforcement services.

The bill makes the following changes:

- Transfers the primary responsibility and powers for investigation and law enforcement of certain environmental crimes from the commission to the department. A new memorandum of agreement will be developed between the commission and the department to detail the responsibilities of both agencies.
- Creates the Division of Law Enforcement in the department and reassigns all personnel and equipment from the department's Office of Emergency Response to the Division of Law Enforcement.
- Establishes a transition advisory workgroup for the purpose of identifying any administrative rules that need to be amended as a result of this consolidation.
- Allows any commission employees who are transferred to the department to retain their leave and current position status.
- Gives the department law enforcement authority in areas of environmental law enforcement where the commission currently has authority. The commission retains its authority.
- Adds the department to the Joint Task Force on State Agency Law Enforcement Communications.

There may be an insignificant negative fiscal impact on state government. The bill conforms to the Proposed House General Appropriations Act for Fiscal Year 2019-2020.

The bill has an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Prior to Fiscal Year 2012-2013, the Department of Environmental Protection had a Division of Law Enforcement. Chapter 2011-66, L.O.F., created a Law Enforcement Consolidation Task Force (Task Force) to evaluate any duplication of law enforcement functions throughout state government and identify any functions that were appropriate for consolidation. The Environmental Unit Sub-Team of the Task Force recommended integrating the entire department Division of Law Enforcement into the Fish & Wildlife Conservation Commission Division of Law Enforcement.

Chapter 2012-88, L.O.F., 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 department's Division of Law Enforcement, excluding the Bureau of Emergency Response, by a type two transfer, to the Division of Law Enforcement within the commission.

The Department of Environmental Protection does not currently employ any sworn law enforcement officers. The Florida Fish and Wildlife Conservation Commission provides law enforcement activities for the department. The department and commission have a memorandum of agreement that identifies the responsibilities of the commission with regard to the department. The department transfers funding to the commission to compensate for these law enforcement services in the following amounts:

- \$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 Fund¹

Effect of Proposed Changes

The bill transfers the primary responsibility and powers for investigation and law enforcement of certain environmental crimes from the commission to the department. The commission retains law enforcement authority over the patrol of state-owned lands managed by the department. A new memorandum of agreement will be developed between the commission and the department to detail the responsibilities of both agencies regarding, at minimum, 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 Department of Environmental Protection.
- 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 all civil violations of all department administrative rules related to the following program areas:
 - Division of Recreation and Parks.
 - Office of Coastal and Aquatic Managed Areas.
 - Office of Greenways and Trails.
- Current and future funding, training, or other support for positions and equipment being transferred to the department which are funded through any trust fund.

The bill reassigns any personnel and equipment currently assigned to the department's Office of Emergency Response to the Division of Law Enforcement within the department.

¹ See Specific Appropriation 1536, chapter 2018-9, Laws of Florida
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The secretary of the department and the executive director of the commission shall each appoint two members to a transition advisory working group to review the administrative rules promulgated by the department and the commission to identify any rules that must be amended to reflect changes made by the bill.

The bill states that notwithstanding chapter 60L-34, F.A.C., or any law to the contrary, employees who are transferred from the commission to fill positions transferred to the department shall retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances. The employees from the commission shall also retain their current position status, including permanent status, upon transfer to the department.

The bill amends s. 20.255, F.S., to establish the Division of Law Enforcement within the department. Law enforcement officers of the department who meet the provisions of s. 943.13, F.S., are constituted law enforcement officers of this state with full power to investigate and arrest for any violation of the laws of Florida, and the rules of the department and the Board of Trustees of the Internal Improvement Trust Fund. The general laws applicable to investigations, searches, and arrests by peace officers apply to department law enforcement officers.

The bill amends s. 258.004, F.S., relating to the duties of the Division of Recreation and Parks of the department, to add that the activities prohibited in part I of chapter 258, F.S., shall be enforced by the Department of Environmental Protection's Division of Law Enforcement and its officers, and the Fish and Wildlife Conservation Commission's Division of Law Enforcement and its officers.

The bill amends s. 258.008(1), F.S., relating to prohibited activities in state parks, to add that fines paid under this subsection shall be paid to the department and deposited in the State Park Trust Fund as applicable.

The bill amends s. 258.501(16), F.S., relating to the Myakka River Wild and Scenic Designation and Preservation Act, to include officers of the department as having full authority to enforce any rules adopted by the department under this section.

The bill amends s. 282.709(2)(a), F.S., relating to the state agency law enforcement radio system and interoperability network, to include a representative of the Division of Law Enforcement of the department who is appointed by the secretary of the department to the Joint Task Force on State Agency Law Enforcement Communications.

The bill amends s. 316.640(1)(a)1.a., F.S., relating to the enforcement of traffic laws, to give the Division of Law Enforcement of the department the authority to enforce all of the traffic laws of Florida.

The bill amends s. 376.3071(4)(p), F.S., relating to the Inland Protection Trust Fund, to give authority to the department to enforce this section and ss. 376.30-376.317, F.S. The department may disburse moneys to the commission for enforcement.

The bill amends s. 403.413(2)(e), F.S., relating to the Florida Litter Law, to include the department in the definition of a law enforcement officer.

The bill amends s. 784.07(1)(d), F.S., relating to assault or battery of law enforcement officers, to include the department in the definition of a law enforcement officer.

The bill amends s. 843.08, F.S., relating to false impersonation, to add that any person who falsely assumes or pretends to be an officer of the department commits a third degree felony.

The bill amends s. 843.085, F.S., relating to unlawful badges or other indicia of authority, to include "Department of Environmental Protection officer" as one of the combination of words that it is unlawful to wear or display with the intent to mislead or cause another person to believe that he or she is a

member of the department. It includes "Department of Environmental Protection officer" as one of the combination of words that it is unlawful to own or operate a motor vehicle marked or identified by any lettering, marking, or insignia, or colorable mention thereof. It is unlawful for a person to sell, transfer, or give away the authorized badge bearing in any manner or combination the words "Department of Environmental Protection officer" with the intent to mislead. A fraternal, benevolent, or labor organization or association is not prohibited from using the words "Department of Environmental Protection officer".

The bill amends s. 870.04, F.S., relating to specified officers to disperse riotous assembly, to authorize the department to command an unlawfully, riotously, or tumultuously assembled number of persons to immediately and peaceably disperse.

The bill amends, s. 932.7055, F.S., relating to disposition of liens and forfeited property, to add that if the seizing agency is the department, the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act shall be deposited into 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 as specified by the statute under which the violation occurs.

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1. Transfers certain responsibilities and powers, as specified in a new memorandum of agreement, from the commission to the department.

Section 2. Assigns all personnel and equipment from the Office of Emergency Response to the Division of Law Enforcement at the department.

Section 3. Creates a transition advisory group to review and determine whether any rules need to be amended.

Section 4. Allows any commission employees who are transferred to the department to retain any leave and their current position status.

Section 5. Amends s. 20.255, F.S., relating to the Department of Environmental Protection.

Section 6. Amends s. 258.004, F.S., relating to the duties of the Division of Recreation and Parks.

Section 7. Amends s. 258.008, F.S., relating to prohibited activities and penalties for state parks.

Section 8. Amends s. 258.501(16), F.S., relating to the Myakka River Wild and Scenic Designation and Preservation Act.

Section 9. Amends s. 282.709(2)(a), F.S., relating to the state agency law enforcement radio system and interoperability network.

Section 10. Amends s. 316.640(1)(a)1.a., F.S., relating to the enforcement of traffic laws.

Section 11. Amends s. 376.3071(4)(p), F.S., relating to the Inland Protection Trust Fund.

Section 12. Amends s. 403.413(2)(e), F.S., relating to the Florida Litter Law.

Section 13. Amends s. 784.07(1)(d), F.S., relating to assault or battery of law enforcement officers.

Section 14. Amends s. 843.08, F.S., relating to false impersonation.

Section 15. Amends s. 843.085, F.S., relating to unlawful badges or other indicia of authority.

Section 16. Amends s. 870.04, F.S., relating to specified officers to disperse riotous assembly.

Section 17. Amends s. 932.7055, F.S., relating to disposition of liens and forfeited property.

Section 18. Amends s. 790.166, F.S., relating to manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction prohibited.

Section 19. Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

A portion of revenues from fines and penalties from law enforcement actions that currently go to the Fish & Wildlife Conservation Commission may now go to the Department of Environmental Protection as the department would be taking over certain environmental law enforcement activities.

2. Expenditures:

There may be an insignificant negative fiscal impact to the Department of Environmental Protection to establish the new Division of Law Enforcement. There may also be an insignificant negative fiscal impact to the department and commission related to rulemaking. These impacts can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill conforms to the proposed House of Representatives' FY 2019-2020 General Appropriations Act, which transfers 19 full-time equivalent positions, 1,076,218 in salary rate, and \$1,991,722 in trust fund authority from the Fish & Wildlife Conservation Commission to the Department of Environmental Protection. The proposed budget also reduces the department's transfer of \$1,991,722 in the Inland Protection Trust Fund to the commission for law enforcement activities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill creates a transition advisory workgroup to review administrative rules promulgated by the department and commission to identify any rules that must be amended.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES