

CHAPTER 2019-141

House Bill No. 5401

An act relating to the Department of Environmental Protection; transferring primary powers and duties of the Fish and Wildlife Conservation Commission relating to certain environmental crimes and the enforcement of related laws to the Division of Law Enforcement within the Department of Environmental Protection; providing requirements for a memorandum of agreement between the department and the commission regarding their respective responsibilities; reassigning personnel and equipment from the Office of Emergency Response within the department to the Division of Law Enforcement within the department; providing for a transition advisory working group; providing for the retention and transfer of specified benefits for employees who are transferred from the commission to the department; amending s. 20.255, F.S.; establishing the Division of Law Enforcement within the department; providing law enforcement officers of the department who meet certain requirements with specified authority; amending s. 258.004, F.S.; requiring the Division of Law Enforcement of the department and its officers and the Division of Law Enforcement of the commission and its officers to enforce laws relating to state parks; amending s. 258.008, F.S.; providing for certain fines to be paid to the department and deposited in the State Park Trust Fund; amending s. 258.501, F.S.; conforming provisions to changes made by the act; amending s. 282.709, F.S.; appointing a representative of the Division of Law Enforcement of the department to the Joint Task Force on State Agency Law Enforcement Communications; amending s. 316.640, F.S.; vesting the enforcement of certain traffic laws in the Division of Law Enforcement of the department; amending s. 376.3071, F.S.; authorizing the use of moneys from the Inland Protection Trust Fund for the enforcement of certain laws by the department; amending ss. 403.413 and 784.07, F.S.; revising definitions; amending ss. 843.08 and 843.085, F.S.; providing penalties for false personation and unlawful use of badges and other symbols of an officer of the department, respectively; amending s. 870.04, F.S.; vesting the dispersement of riotous assembly in the officers of the department; amending s. 932.7055, F.S.; providing for proceeds accrued pursuant to the Florida Contraband Forfeiture Act to be deposited in specified trust funds of the department; reenacting s. 790.166(8)(a), F.S., relating to the prohibited manufacturing, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction, to incorporate the amendment made to s. 784.07, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The primary powers and duties of the Fish and Wildlife Conservation Commission relating to the investigation of certain

environmental crimes and the enforcement of related laws, as specified in the new memorandum of agreement developed as required under subsection (2), are transferred to the Division of Law Enforcement within the Department of Environmental Protection. The commission retains law enforcement authority over the patrol of state-owned lands managed by the department and shall coordinate with the department in that regard.

(2) A new memorandum of agreement must be developed between the commission and the department detailing their respective responsibilities regarding, at minimum, the following:

(a) Support and response for oil spills, hazardous spills, and natural disasters.

(b) Law enforcement patrol and investigative services for all state-owned lands managed by the department.

(c) Law enforcement services, including investigative services, for all criminal law violations of chapters 161, 258, 373, 376, 377, 378, and 403, Florida Statutes.

(d) Enforcement services for civil violations of department administrative rules related to all of the following program areas:

- 1. The Division of Recreation and Parks.
- 2. The Office of Coastal and Aquatic Managed Areas.
- 3. The Office of Greenways and Trails.

(e) Current and future funding, training, or other support for positions and equipment being transferred from the commission to the department which are funded through any trust fund.

Section 2. All personnel and equipment assigned to the Office of Emergency Response within the Department of Environmental Protection are reassigned to the Division of Law Enforcement within the department.

Section 3. The Secretary of Environmental Protection and the Executive Director of the Fish and Wildlife Conservation Commission shall each appoint two staff members to a transition advisory working group to review the administrative rules adopted by the Department of Environmental Protection and the commission to identify any rules that must be amended to reflect the changes made by this act.

Section 4. Notwithstanding chapter 60L-34, Florida Administrative Code, or any law to the contrary, employees who are transferred from the Fish and Wildlife Conservation Commission to fill positions transferred to the Department of Environmental Protection shall retain and transfer any accrued annual leave, sick leave, and regular and special compensatory

leave balances. The employees shall retain their current position status, including permanent status, upon transfer to the department.

Section 5. Paragraph (i) is added to subsection (3) of section 20.255, Florida Statutes, and subsection (10) is added that section, to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(3) The following divisions of the Department of Environmental Protection are established:

(i) Division of Law Enforcement.

In order to ensure statewide and intradepartmental consistency, the department’s divisions shall direct the district offices and bureaus on matters of interpretation and applicability of the department’s rules and programs.

(10) Law enforcement officers of the Department of Environmental Protection who meet the requirements of s. 943.13 are constituted law enforcement officers of this state with full power to investigate and arrest for any violation of the laws of this state 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 of this state apply to such law enforcement officers.

Section 6. Subsection (8) is added to section 258.004, Florida Statutes, to read:

258.004 Duties of division.—

(8) This part shall be enforced by the Division of Law Enforcement of the Department of Environmental Protection and its officers and by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers.

Section 7. Subsection (1) of section 258.008, Florida Statutes, is amended to read:

258.008 Prohibited activities; penalties.—

(1) Except as provided in subsection (3), any person who violates or otherwise fails to comply with the rules adopted under this chapter commits a noncriminal infraction for which ejection from all property managed by the Division of Recreation and Parks and a fine of up to \$500 may be imposed by the division. Fines paid under this subsection shall be paid to the Fish and Wildlife Conservation Commission and deposited in the State Game Trust Fund as provided in ss. 379.338, 379.339, and 379.3395 or to the Department of Environmental Protection and deposited in the State Park Trust Fund, as applicable.

Section 8. Subsection (16) of section 258.501, Florida Statutes, is amended to read:

258.501 Myakka River; wild and scenic segment.—

(16) ENFORCEMENT.—Officers of the department and the Fish and Wildlife Conservation Commission shall have full authority to enforce any rule adopted by the department.

Section 9. Paragraph (a) of subsection (2) of section 282.709, Florida Statutes, is amended to read:

282.709 State agency law enforcement radio system and interoperability network.—

(2) The Joint Task Force on State Agency Law Enforcement Communications is created adjunct to the department to advise the department of member-agency needs relating to the planning, designing, and establishment of the statewide communication system.

(a) The Joint Task Force on State Agency Law Enforcement Communications shall consist of the following members:

1. A representative of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation who shall be appointed by the secretary of the department.

2. A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles who shall be appointed by the executive director of the department.

3. A representative of the Department of Law Enforcement who shall be appointed by the executive director of the department.

4. A representative of the Fish and Wildlife Conservation Commission who shall be appointed by the executive director of the commission.

5. A representative of the Division of Law Enforcement of the Department of Environmental Protection who shall be appointed by the secretary of the department.

~~6.5.~~ A representative of the Department of Corrections who shall be appointed by the secretary of the department.

~~7.6.~~ A representative of the Department of Financial Services who shall be appointed by the Chief Financial Officer.

~~8.7.~~ A representative of the Department of Agriculture and Consumer Services who shall be appointed by the Commissioner of Agriculture.

~~9.8.~~ A representative of the Florida Sheriffs Association who shall be appointed by the president of the Florida Sheriffs Association.

Section 10. Paragraph (a) of subsection (1) of section 316.640, Florida Statutes, is amended to read:

316.640 Enforcement.—The enforcement of the traffic laws of this state is vested as follows:

(1) STATE.—

(a)1.a. The Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles; the Division of Law Enforcement of the Fish and Wildlife Conservation Commission; the Division of Law Enforcement of the Department of Environmental Protection; and the agents, inspectors, and officers of the Department of Law Enforcement each have authority to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle.

b. University police officers may enforce all of the traffic laws of this state when violations occur on or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of a state university, a direct-support organization of such state university, or any other organization controlled by the state university or a direct-support organization of the state university, or when such violations occur within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225(1). Traffic laws may also be enforced off-campus when hot pursuit originates on or within 1,000 feet of any such property or facilities, or as agreed upon in accordance with the mutual aid agreement.

c. Florida College System institution police officers may enforce all the traffic laws of this state only when such violations occur on or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of the Florida College System institution, or when such violations occur within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225. Traffic laws may also be enforced off-campus when hot pursuit originates on or within 1,000 feet of any such property or facilities, or as agreed upon in accordance with the mutual aid agreement.

d. Police officers employed by an airport authority may enforce all of the traffic laws of this state only when such violations occur on any property or facilities that are owned or operated by an airport authority.

(I) An airport authority may employ as a parking enforcement specialist any individual who successfully completes a training program established and approved by the Criminal Justice Standards and Training Commission for parking enforcement specialists but who does not otherwise meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary or part-time officers under s. 943.12. This sub-sub-subparagraph may not be construed to permit the carrying of

firearms or other weapons, nor shall such parking enforcement specialist have arrest authority.

(II) A parking enforcement specialist employed by an airport authority may enforce all state, county, and municipal laws and ordinances governing parking only when such violations are on property or facilities owned or operated by the airport authority employing the specialist, by appropriate state, county, or municipal traffic citation.

e. The Office of Agricultural Law Enforcement of the Department of Agriculture and Consumer Services may enforce traffic laws of this state.

f. School safety officers may enforce all of the traffic laws of this state when such violations occur on or about any property or facilities that are under the guidance, supervision, regulation, or control of the district school board.

2. Any disciplinary action taken or performance evaluation conducted by an agency of the state as described in subparagraph 1. of a law enforcement officer's traffic enforcement activity must be in accordance with written work-performance standards. Such standards must be approved by the agency and any collective bargaining unit representing such law enforcement officer. A violation of this subparagraph is not subject to the penalties provided in chapter 318.

3. The Division of the Florida Highway Patrol may employ as a traffic accident investigation officer any individual who successfully completes instruction in traffic accident investigation and court presentation through the Selective Traffic Enforcement Program as approved by the Criminal Justice Standards and Training Commission and funded through the National Highway Traffic Safety Administration or a similar program approved by the commission, but who does not necessarily meet the uniform minimum standards established by the commission for law enforcement officers or auxiliary law enforcement officers under chapter 943. Any such traffic accident investigation officer who makes an investigation at the scene of a traffic accident may issue traffic citations, based upon personal investigation, when he or she has reasonable and probable grounds to believe that a person who was involved in the accident committed an offense under this chapter, chapter 319, chapter 320, or chapter 322 in connection with the accident. This subparagraph does not permit the officer to carry firearms or other weapons, and such an officer does not have authority to make arrests.

Section 11. Paragraph (p) of subsection (4) of section 376.3071, Florida Statutes, is amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(4) USES.—Whenever, in its determination, incidents of inland contamination related to the storage of petroleum or petroleum products may pose a

threat to the public health, safety, or welfare, water resources, or the environment, the department shall obligate moneys available in the fund to provide for:

(p) Enforcement of this section and ss. 376.30-376.317 by the Fish and Wildlife Conservation Commission and the Department of Environmental Protection. The department may ~~shall~~ disburse moneys to the commission for such purpose.

The issuance of a site rehabilitation completion order pursuant to subsection (5) or paragraph (12)(b) for contamination eligible for programs funded by this section does not alter the project's eligibility for state-funded remediation if the department determines that site conditions are not protective of human health under actual or proposed circumstances of exposure under subsection (5). The Inland Protection Trust Fund may be used only to fund the activities in ss. 376.30-376.317 except ss. 376.3078 and 376.3079. Amounts on deposit in the fund in each fiscal year must first be applied or allocated for the payment of amounts payable by the department pursuant to paragraph (n) under a service contract entered into by the department pursuant to s. 376.3075 and appropriated in each year by the Legislature before making or providing for other disbursements from the fund. This subsection does not authorize the use of the fund for cleanup of contamination caused primarily by a discharge of solvents as defined in s. 206.9925(6), or polychlorinated biphenyls when their presence causes them to be hazardous wastes, except solvent contamination which is the result of chemical or physical breakdown of petroleum products and is otherwise eligible. Facilities used primarily for the storage of motor or diesel fuels as defined in ss. 206.01 and 206.86 are not excluded from eligibility pursuant to this section.

Section 12. Paragraph (e) of subsection (2) of section 403.413, Florida Statutes, is amended to read:

403.413 Florida Litter Law.—

(2) DEFINITIONS.—As used in this section:

(e) “Law enforcement officer” means any officer of the Florida Highway Patrol, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department of Environmental Protection, or the Fish and Wildlife Conservation Commission. In addition, and solely for the purposes of this section, “law enforcement officer” means any employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer.

Section 13. Paragraph (d) of subsection (1) of section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

(1) As used in this section, the term:

(d) “Law enforcement officer” includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Florida Commission on Offender Review; a federal law enforcement officer as defined in s. 901.1505; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement.

Section 14. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation.—A person who falsely assumes or pretends to be a firefighter, sheriff, officer of the Florida Highway Patrol, officer of the Fish and Wildlife Conservation Commission, officer of the Department of Environmental Protection, fire or arson investigator of the Department of Financial Services, officer of the Department of Financial Services, officer of the Department of Corrections, correctional probation officer, deputy sheriff, state attorney or assistant state attorney, statewide prosecutor or assistant statewide prosecutor, state attorney investigator, coroner, police officer, lottery special agent or lottery investigator, beverage enforcement agent, or watchman, or any member of the Florida Commission on Offender Review and any administrative aide or supervisor employed by the commission, or any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The term “watchman” means a security officer licensed under chapter 493.

Section 15. Section 843.085, Florida Statutes, is amended to read:

843.085 Unlawful use of badges or other indicia of authority.—

(1) It is unlawful for any person, unless appointed by the Governor pursuant to chapter 354, authorized by the appropriate agency, or displayed

in a closed or mounted case as a collection or exhibit, to wear or display any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof, of any federal, state, county, or municipal law enforcement agency, or other criminal justice agency as defined in s. 943.045, with the intent to mislead or cause another person to believe that he or she is a member of that agency or is authorized to display or wear such item, or to wear or display any item that displays in any manner or combination the word or words “police,” “patrolman,” “agent,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Department of Environmental Protection officer,” “Marine Patrol Officer,” “state attorney,” “public defender,” “marshal,” “constable,” “bailiff,” or “fire department,” with the intent to mislead or cause another person to believe that he or she is a member of that agency or is authorized to wear or display such item.

(2) It is unlawful for a person to own or operate a motor vehicle marked or identified in any manner or combination by the word or words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Department of Environmental Protection officer,” “Marine Patrol Officer,” “marshal,” “constable,” “bailiff,” or “fire department,” or by any lettering, marking, or insignia, or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency as defined in s. 943.045, or a vehicle used by a fire department with the intent to mislead or cause another person to believe that such vehicle is an official vehicle of that agency and is authorized to be used by that agency, unless such vehicle is owned or operated by the appropriate agency and its use is authorized by such agency, or the local law enforcement agency or fire department authorizes the use of such vehicle, or the person is appointed by the Governor pursuant to chapter 354.

(3) It is unlawful for a person to sell, transfer, or give away the authorized badge, or colorable imitation thereof, including miniatures, of any criminal justice agency as defined in s. 943.045, or bearing in any manner or combination the word or words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Department of Environmental Protection officer,” “Marine Patrol Officer,” “marshal,” “constable,” “agent,” “state attorney,” “public defender,” “bailiff,” or “fire department,” with the intent to mislead or cause another person to believe that he or she is a member of that agency or is authorized to wear or display such item, except for agency purchases or upon the presentation and recordation of both a driver license and other identification showing any transferee to actually be a member of such criminal justice agency or unless the person is appointed by the Governor pursuant to chapter 354. A transferor of an item covered by this subsection is required to maintain for 2 years a written record of such transaction, including records showing compliance with this subsection, and if such transferor is a business, it shall make such records available during normal

business hours for inspection by any law enforcement agency having jurisdiction in the area where the business is located.

(4) This section does not prohibit a fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, from using the following words, in any manner or in any combination, if those words appear in the official name of the organization or association: “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Department of Environmental Protection officer,” “Marine Patrol Officer,” “marshal,” “constable,” “bailiff,” or “fire department.”

(5) ~~A violation of any provision of~~ this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section is cumulative to any law now in force in the state.

Section 16. Section 870.04, Florida Statutes, is amended to read:

870.04 Specified officers to disperse riotous assembly.—If any number of persons, whether armed or not, are unlawfully, riotously, or tumultuously assembled in any county, city, or municipality, the sheriff or the sheriff’s deputies, or the mayor, or any commissioner, council member, alderman, or police officer of the city or municipality, or any officer or member of the Florida Highway Patrol, or any officer or agent of the Fish and Wildlife Conservation Commission or the Department of Environmental Protection, any beverage enforcement agent, any personnel or representatives of the Department of Law Enforcement or its successor, or any other peace officer, shall go among the persons so assembled, or as near to them as may be done with safety, and shall in the name of the state command all the persons so assembled immediately and peaceably to disperse. If such persons do not thereupon immediately and peaceably disperse, such officers shall command the assistance of all such persons in seizing, arresting, and securing such persons in custody. If any person present being so commanded to aid and assist in seizing and securing such rioter or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such officers to depart from the place, refuses and neglects to do so, the person shall be deemed one of the rioters or persons unlawfully assembled, and may be prosecuted and punished accordingly.

Section 17. Present paragraphs (b) through (l) of subsection (6) of section 932.7055, Florida Statutes, are redesignated as paragraphs (c) through (m), respectively, and a new paragraph (b) is added to that subsection to read:

932.7055 Disposition of liens and forfeited property.—

(6) If the seizing agency is a state agency, all remaining proceeds shall be deposited into the General Revenue Fund. However, if the seizing agency is:

(b) The Department of Environmental Protection, the proceeds accrued pursuant to the Florida Contraband Forfeiture Act shall be deposited in 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.

Section 18. For the purpose of incorporating the amendment made by this act to section 784.07, Florida Statutes, in a reference thereto, paragraph (a) of subsection (8) of section 790.166, Florida Statutes, is reenacted to read:

790.166 Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction prohibited; definitions; penalties.—

(8) For purposes of this section, the term “weapon of mass destruction” does not include:

(a) A device or instrument that emits or discharges smoke or an offensive, noxious, or irritant liquid, powder, gas, or chemical for the purpose of immobilizing, incapacitating, or thwarting an attack by a person or animal and that is lawfully possessed or used by a person for the purpose of self-protection or, as provided in subsection (7), is lawfully possessed or used by any member or employee of the Armed Forces of the United States, a federal or state governmental agency, or a private entity. A member or employee of a federal or state governmental agency includes, but is not limited to, a law enforcement officer, as defined in s. 784.07; a federal law enforcement officer, as defined in s. 901.1505; and an emergency service employee, as defined in s. 496.404.

Section 19. This act shall take effect July 1, 2019.

Approved by the Governor June 25, 2019.

Filed in Office Secretary of State June 25, 2019.