

Tab 1 SB 262 by Harrell; (Similar to H 00029) Dispensing Medicinal Drugs							
168678	A	S	RCS	MS, Harrell	Delete L.54:		03/24 07:32 AM

Tab 2 SB 1892 by Diaz; (Identical to H 01595) Emergency Preparedness and Response Fund							
713988	A	S	RCS	MS, Diaz	Delete L.18 - 20:		03/24 10:38 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

**MILITARY AND VETERANS AFFAIRS, SPACE, AND
DOMESTIC SECURITY**

**Senator Wright, Chair
Senator Harrell, Vice Chair**

MEETING DATE: Tuesday, March 23, 2021

TIME: 3:30—6:00 p.m.

PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Wright, Chair; Senator Harrell, Vice Chair; Senators Burgess, Cruz, Gibson, Rodriguez, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A2 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W. PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	SB 262 Harrell (Similar H 29)	Dispensing Medicinal Drugs; Authorizing certain hospitals to dispense supplies of prescribed medicinal drugs in a specified amount to emergency department patients or inpatients upon discharge under certain circumstances; authorizing a greater specified supply of medicinal drugs to be prescribed and dispensed in areas in which a state of emergency has been declared and is in effect; authorizing a prescriber to provide a patient with a prescription for medicinal drugs beyond the initial prescription period under certain circumstances, etc. HP 03/10/2021 Favorable MS 03/23/2021 Fav/CS AP	Fav/CS Yeas 7 Nays 0
2	SB 1892 Diaz (Identical H 1595)	Emergency Preparedness and Response Fund; Creating the Emergency Preparedness and Response Fund within the Executive Office of the Governor; providing for the deposit and use of funds; providing for future review and termination of the fund, etc. MS 03/23/2021 Fav/CS ATD AP	Fav/CS Yeas 7 Nays 0
Other Related Meeting Documents			

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 Military and Veterans Affairs, Space, and Domestic Security

BILL: CS/SB 262

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Harrell

SUBJECT: Dispensing Medicinal Drugs

DATE: March 23, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Brown</u>	<u>HP</u>	<u>Favorable</u>
2.	<u>Brown</u>	<u>Caldwell</u>	<u>MS</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 262 amends s. 465.019, F.S., to authorize medicinal drugs to be dispensed by a hospital that operates a Class II or Class III institutional pharmacy to a patient of the hospital's emergency department or a hospital inpatient upon discharge if a prescriber treating the patient in the hospital determines that:

- The medicinal drug is warranted; and
- Community pharmacy services are not readily accessible to the patient, geographically or otherwise.

If prescribing and dispensing occurs, the bill requires that a supply of the drug must be dispensed that will last for the greater of up to 48 hours or through the end of the next business day, and that during a declared state of emergency, a 72-hour supply may be dispensed by a hospital located in an area affected by the emergency.

Any of these new circumstances that authorize the prescription of a controlled substance must comply with existing regulations and restrictions on the prescribing of a controlled substance.

The bill has an insignificant fiscal impact on the Department of Health (DOH) that can be absorbed within existing resources.

The bill takes effect July 1, 2021.

II. Present Situation:

Medicinal Prescribing and Dispensing Practitioners

There are several professions in Florida that have prescriptive authority at various levels, including:

- Allopathic physicians;
- Osteopathic physicians;
- Podiatrists;
- Dentists;
- Advanced practice registered nurses;¹
- Physician assistants;² and
- Pharmacists.³

A person may not dispense medicinal drugs unless licensed as a pharmacist, except that a practitioner authorized by law to prescribe drugs may dispense medicinal drugs to patients in the regular course of practice.⁴ A practitioner who dispenses medicinal drugs for human consumption for a fee or remuneration of any kind, whether directly or indirectly, must:

- Register with the professional licensing board as a dispensing practitioner and pay a board-established fee at the time of registration and upon renewal of his or her license;
- Comply with, and be subject to, all laws and rules applicable to pharmacists and pharmacies, including, chs. 456, 499, and 893, F.S., and all applicable federal laws and federal regulations; and
- Give each patient a written prescription and, orally or in writing, advise the patient that the prescription may be filled in the practitioner's office or at any pharmacy, before dispensing any drug.⁵

Pharmacy

The practice of pharmacy and the licensure of pharmacies are regulated under ch. 465, F.S. The "practice of the profession of pharmacy" includes:

- Compounding, dispensing, and consulting the consumer concerning the contents, therapeutic values, and uses of any medicinal (prescription)⁶ drug; and
- Other pharmaceutical services.^{7, 8}

¹ Section 464.012(3)(a), F.S.

² See ss. 458.347(4)(e)4., and 459.022(4)(e)4., F.S.

³ See s. 465.186, F.S., and Fla. Admin. Code R. 64B8-36.001 (2019).

⁴ Section 465.0276(1)(a), F.S.

⁵ Section 465.0276(2)(a), (b), and (c), F.S.

⁶ Under s. 465.003(8), F.S., "medicinal drugs" means substances commonly known as "prescription" or "legend" drugs required by law to be dispensed by prescription only.

⁷ Section 465.003(13), F.S.

⁸ In the context of pharmacy practice, "other pharmaceutical services" means the monitoring of the patient's drug therapy and assisting the patient in the management of his or her drug therapy, and includes review of the patient's drug therapy and communication with the patient's prescribing health care provider as licensed under chs. 458, 459, 461, or 466, F.S., or similar statutory provision in another jurisdiction, or such provider's agent or such other persons as specifically authorized by the patient, regarding the drug therapy. The "practice of the profession of pharmacy" also includes any other act, service, operation, research, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or

The Board of Pharmacy

The Board of Pharmacy (BOP) is created within the DOH and is authorized to make rules to regulate the practice of professional pharmacy in pharmacies meeting minimum requirements for safe practice.⁹ All pharmacies must obtain a permit before operating, unless exempt by law. This is true whether opening a new establishment or simply changing locations or owners.¹⁰

The Practice of Pharmacy

Florida law recognizes seven types of pharmacies as eligible for various operating permits to be issued by the DOH:

- Community pharmacy;¹¹
- Institutional pharmacy;¹²
- Nuclear pharmacy;¹³
- Special pharmacy;¹⁴
- Internet pharmacy;¹⁵
- Non-resident sterile compounding pharmacy;¹⁶ and
- Special sterile compounding pharmacy.¹⁷

Institutional Pharmacies

An “institutional pharmacy” includes any pharmacy located in a health care institution, which includes a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medicinal drugs are compounded, dispensed, stored, or sold.¹⁸ Institutional pharmacy permits are required for any pharmacy located in any health care institution.¹⁹

employing the science or art of any branch of the pharmaceutical profession, study, or training, expressly permits a pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients, and includes the administration of vaccines to adults. *See* s. 465.003(13), F.S.

⁹ *See* ss. 465.002, and 465.0155, F.S.

¹⁰ Fla. Admin. Code R. 64B16-28.100(1) (2019).

¹¹ The term “community pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis. *See* ss. 465.003(11)(a)1. and 465.018, F.S.

¹² *See* ss. 465.003(11)(a)2., and 465.019, F.S.

¹³ The term “nuclear pharmacy” includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, but does not include hospitals licensed under ch. 395, F.S., or the nuclear medicine facilities of such hospitals. *See* ss. 465.003(11)(a)3. and 465.0193, F.S.

¹⁴ The term “special pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined by law. *See* ss. 465.003(11)(a)4. and 465.0196, F.S.

¹⁵ The term “internet pharmacy” includes locations not otherwise licensed or issued a permit under ch. 465, F.S., whether or not in Florida, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. *See* ss. 465.003(11)(a)5. and 465.0197, F.S.

¹⁶ The term “nonresident sterile compounding pharmacy” includes a pharmacy that ships, mails, delivers, or dispenses, in any manner, a compounded sterile product into Florida, and a nonresident pharmacy registered under s. 465.0156, F.S., or an outsourcing facility, must hold a nonresident sterile compounding permit. *See* s. 465.0158(1), F.S.

¹⁷ *See* Fla. Admin. Code R. 64B16-28.100 and 64B16-28.802 (2019). An outsourcing facility is considered a pharmacy and must hold a special sterile compounding permit if it engages in sterile compounding.

¹⁸ Section 465.003(11)(a)2., F.S.

¹⁹ Fla. Admin. Code R. 64B16-28.100(3) (2019).

All institutional pharmacies must designate a consultant pharmacist²⁰ who is responsible for maintaining all drug records required by law, and for establishing drug handling procedures for the safe handling and storage of drugs. The consultant pharmacist may also be responsible for ordering and evaluating any laboratory or clinical tests when these tests are necessary.²¹ These laboratory or clinical tests may be ordered only for patients residing in a nursing home, when authorized by the facility's medical director. The consultant pharmacist must complete additional training and demonstrate additional qualifications in the practice of institutional pharmacy, as required by the BOP, and be licensed as a registered pharmacist.^{22, 23}

Currently there are four types of institutional pharmacy permits issued by the BOP to institutional pharmacies: Institutional Class I, Class II, Modified Class II, and Class III.²⁴

Institutional Class I Pharmacy

A Class I institutional pharmacy is an institutional pharmacy in which all medicinal drugs are administered from individual prescription containers to an individual patient and in which medicinal drugs are not dispensed on the premises, except that licensed nursing homes²⁵ may purchase medical oxygen for administration to residents.²⁶

Institutional Class II Pharmacy

A Class II institutional pharmacy is a pharmacy that employs the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, provide dispensing and consulting services on the premises to patients of the institution, for use on the premises of the institution.²⁷ A Class II institutional pharmacy is required to be open sufficient hours to meet the needs of the hospital facility.²⁸ The consultant pharmacist of record is responsible for establishing a written policy and procedure manual.²⁹ An institutional Class II pharmacy may elect to participate in the Cancer Drug Donation Program within the Department of Business and Professional Regulation.³⁰

²⁰ See ss. 465.003(11), and 465.0125, F.S.

²¹ *Id.*

²² Section 465.0125, F.S.

²³ As required by Fla. Admin. Code R. 64B16-28.501(1), (2), and (3) (2019), the consultant pharmacist must also “conduct Drug Regimen Reviews required by Federal or State law, inspect the facility and prepare a written report to be filed at the permitted facility at least monthly, . . . monitor the facility system for providing medication administration records and physician order sheets to ensure that the most current record of medications is available for the monthly drug regimen review, and may utilize additional consultant pharmacists to assist in this review and in the monthly facility inspection.” A licensed consultant pharmacist may “remotely access a facility or pharmacy’s electronic database from outside the facility or pharmacy to conduct any services additional or supplemental to regular drug regimen reviews, subject to the pharmacy or facility establishing policies and procedures to ensure the security and privacy of confidential patient records, including compliance with applicable Federal HIPAA regulations.” The BOP must be notified in writing within ten days of any change in the consultant pharmacist of record, pursuant to Fla. Admin. Code R. 64B16-28.501(1)(b) (2019).

²⁴ Section 465.019, F.S.

²⁵ See part II, ch. 400, F.S., relating to nursing homes.

²⁶ Section 465.019(2)(a), F.S.

²⁷ See s. 465.019(2)(b), F.S. Exceptions apply when there is a state of emergency and for single doses of a drug ordered by physicians in limited circumstances.

²⁸ Fla. Admin. Code R. 64B16-28.603 (2019).

²⁹ Section 465.019(5), F.S.

³⁰ See s. 499.029, F.S., relating to the Cancer Drug Donation Program Act.

Modified Institutional Class II Pharmacy Permits

Modified Institutional Class II pharmacies are institutional pharmacies in short-term, primary care treatment centers that meet all the requirements for a Class II permit, except space and equipment requirements.³¹ Modified Class II Institutional pharmacies are designated as Type A, Type B, and Type C according to the specialized type of the medicinal drug delivery system utilized at the facility, either a patient-specific or bulk drug system, and the quantity of the medicinal drug formulary at the facility.³²

All Modified Class II institutional pharmacies must be under the control and supervision of a certified consultant pharmacist. The consultant pharmacist of record is responsible for developing and maintaining a current policy and procedure manual. The permittee must make available the policy and procedure manual to the appropriate state or federal agencies upon inspection.³³

Institutional Class III Pharmacies

Class III institutional pharmacies are pharmacies, including central distribution facilities, that are affiliated with a hospital that provide the same services authorized by a Class II institutional pharmacy permit. Class III institutional pharmacies may also:

- Dispense, distribute, compound, and fill prescriptions for medicinal drugs;
- Prepare prepackaged drug products;
- Conduct other pharmaceutical services for the affiliated hospital and for entities under common control that are each permitted under ch. 465, F.S., to possess medicinal drugs; and
- Provide the services in Class I institutional pharmacies, Class II institutional pharmacies, and Modified Class II institutional pharmacies that hold an active health care clinic establishment permit.^{34, 35}

A Class III institutional pharmacy must also maintain policies and procedures addressing the following:

- The consultant pharmacist responsible for pharmaceutical services;

³¹ Section 465.019(2)(c), F.S.

³² Fla. Admin. Code R. 64B16-28.702(2) (2019). Modified Class II Institutional Pharmacies provide the following pharmacy services: (1) Type “A” Modified Class II Institutional Pharmacies provide pharmacy services in a facility which has a formulary of not more than 15 medicinal drugs, excluding those medicinal drugs contained in an emergency box, and in which the medicinal drugs are stored in bulk and in which the consultant pharmacist provides on-site consultations not less than once every month, unless otherwise directed by the BOP after review of the policy and procedure manual; (2) Type “B” Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and in bulk form and which has an expanded drug formulary, and in which the consultant pharmacist provides on-site consultations not less than once per month, unless otherwise directed by the BOP after review of the policy and procedure manual; and (3) Type “C” Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and which has an expanded drug formulary, and in which the consultant pharmacist provides onsite consultations not less than once per month, unless otherwise directed by the BOP after review of the policy and procedure manual.

³³ See Florida Board of Pharmacy, *Institutional Pharmacy Permit*, available at <http://floridaspharmacy.gov/licensing/institutional-pharmacy-permit/> (last visited March 19, 2021).

³⁴ Section 465.019(2)(d)1., F.S.

³⁵ See s. 499.01(2)(r), F.S.

- Safe practices for the preparation, dispensing, prepackaging, distribution, and transportation of medicinal drugs and prepackaged drug products;
- Recordkeeping to monitor the movement, distribution, and transportation of medicinal drugs and prepackaged drug products;
- Recordkeeping of pharmacy staff responsible for each step in the preparation, dispensing, prepackaging, transportation, and distribution of medicinal drugs and prepackaged drug products; and
- Medicinal drugs and prepackaged drug products that may not be safely distributed among Class III institutional pharmacies.³⁶

Institutional Pharmacies – Dispensing Medicinal Drugs

Class II and Class III institutional pharmacies are permitted to dispense medicinal drugs to outpatients only when that institution has been issued a community pharmacy permit from the DOH.³⁷ An individual licensed to prescribe medicinal drugs may dispense up to a 24-hour supply of a medicinal drug to any patient of an emergency department of a hospital that operates a Class II or Class III institutional pharmacy, provided the physician treating the patient in such hospital's emergency department determines the following:

- The medicinal drug is warranted; and
- Community pharmacy services are not readily accessible, geographically or otherwise, to the patient.³⁸

Such dispensing from the emergency department must be in accordance with the procedures of the hospital. For any patient for whom a medicinal drug is determined to be warranted by the treating emergency department physician for a period to exceed 24 hours, an individual licensed to prescribe the drug must dispense a 24-hour supply of the drug to the patient and provide the patient with a prescription for the drug for use after the initial 24-hour period.³⁹ The BOP is authorized to adopt rules necessary to carry out these provisions.

III. Effect of Proposed Changes:

The bill permits medicinal drugs to be dispensed by a hospital that operates a Class II or Class III institutional pharmacy to a patient of the hospital's emergency department or a hospital inpatient upon discharge if a prescriber treating the patient in the hospital determines that:

- The medicinal drug is warranted; and
- Community pharmacy services are not readily accessible to the patient, geographically or otherwise.

If such prescribing and dispensing occurs, the bill requires that a supply of the drug must be dispensed that will last for the greater of up to 48 hours or through the end of the next business day; however, a supply lasting up to 72 hours may be dispensed during a declared state of emergency by a hospital located in an area affected by the emergency.

³⁶ Section 465.019(2)(d)2., F.S.

³⁷ See s. 465.019(2)(a), F.S., which prohibits a Class I institutional pharmacy from dispensing medicinal drugs.

³⁸ Section 465.019(4), F.S.

³⁹ *Id.*

A prescriber who prescribes medicinal drugs under the above circumstances may provide the patient with a prescription for such drug for use beyond the initial prescription period if the prescriber determines that use is warranted.

A prescription authorized under any of these conditions must comply with existing regulations on controlled substances provided in ss. 456.44 and 465.0276, F.S.⁴⁰

The Board of Pharmacy, Department of Health is authorized to adopt rules to implement the bill.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁴⁰ Sections 456.44 and 465.0276, F.S., impose restrictions and limitations on controlled substance prescribing, such as what may be prescribed and how often.

C. Government Sector Impact:

The Department of Health expects to incur a non-recurring cost based on rulemaking, and anticipates that the cost can be absorbed within current budget authority.⁴¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 465.019 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Military and Veterans Affairs, Space, and Domestic Security on March 23, 2021:

The committee substitute provides that the new conditions that authorize the prescribing of a controlled substance are subject to ss. 456.44 and 465.0276, F.S., which regulate the prescribing of controlled substances.

B. Amendments:

None.

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

⁴¹ Department of Health, *2021 Agency Legislative Bill Analysis, SB 262* (Jan. 25, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).



168678

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2021	.	
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	.	
	.	

The Committee on Military and Veterans Affairs, Space, and Domestic Security (Harrell) recommended the following:

Senate Amendment

Delete line 54
and insert:
is warranted. Any prescribing or dispensing of a controlled
substance under this subsection must comply with the applicable
requirements of ss. 456.44 and 465.0276.

By Senator Harrell

25-00486-21

2021262__

A bill to be entitled

An act relating to dispensing medicinal drugs; amending s. 465.019, F.S.; authorizing certain hospitals to dispense supplies of prescribed medicinal drugs in a specified amount to emergency department patients or inpatients upon discharge under certain circumstances; authorizing a greater specified supply of medicinal drugs to be prescribed and dispensed in areas in which a state of emergency has been declared and is in effect; authorizing a prescriber to provide a patient with a prescription for medicinal drugs beyond the initial prescription period under certain circumstances; providing an effective date.

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

Section 1. Subsection (4) of section 465.019, Florida Statutes, is amended to read:

465.019 Institutional pharmacies; permits.—

(4) (a) Medicinal drugs shall be dispensed in an institutional pharmacy to outpatients only when that institution has secured a community pharmacy permit from the department. However, ~~an individual licensed to prescribe medicinal drugs in this state may be dispensed by dispense up to a 24-hour supply of a medicinal drug to any patient of an emergency department of~~ a hospital that operates a Class II or Class III institutional pharmacy to a patient of the hospital's emergency department or a hospital inpatient upon discharge if a prescriber, as defined in s. 465.025(1), provided that the physician treating the

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

25-00486-21

2021262__

patient in such ~~hospital~~ hospital's emergency department determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise, to the patient. Such prescribing and dispensing from the emergency department must be in accordance with the procedures of the hospital must be for a supply of the drug that will last for the greater of the following:

1. Up to 48 hours; or

2. Through the end of the next business day.

(b) Notwithstanding subparagraph (a)1., if a state of emergency has been declared and is in effect for an area of this state pursuant to s. 252.36, a supply of a medicinal drug which will last up to 72 hours may be prescribed and dispensed under paragraph (a) in that area ~~For any such patient for whom a medicinal drug is warranted for a period to exceed 24 hours, an individual licensed to prescribe such drug must dispense a 24-hour supply of such drug to the patient and must provide the patient with a prescription for such drug for use after the initial 24-hour period.~~

(c) A prescriber as defined in s. 465.025(1) who prescribes medicinal drugs under this subsection may provide the patient with a prescription for such drug for use beyond the initial prescription period if the prescriber determines that such use is warranted.

(d) The board may adopt rules necessary to implement ~~early~~ out the provisions of this subsection.

Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Transportation, *Chair*
Military and Veterans Affairs, Space,
and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:

Select Committee on Pandemic
Preparedness and Response

SENATOR GAYLE HARRELL
25th District

March 10, 2021

Military and Veterans Affairs, Space and Domestic Security Committee
Senator Tom Wright
531 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Wright,

I respectfully request that **SB 262 – Dispensing Medicinal Drugs** be placed on the next available agenda for the Military and Veterans Affairs Committee Meeting. SB 262 passed Health Policy unanimously.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: Diana Caldwell, Staff Director
Lois Graham, Committee Administrative Assistant

REPLY TO:

- ☐ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
- ☐ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

3/23/21

Meeting Date

262

Bill Number (if applicable)

Topic Dispensing Medicinal Drugs

Amendment Barcode (if applicable)

Name Steve Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr

Phone 878-7364

Street

Tallahassee

FL

32301

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/23/21

Meeting Date

262

Bill Number (if applicable)

Topic Dispensing Medicinal Drugs

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

Address _____ Phone _____
Street

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Military and Veterans Affairs, Space, and Domestic Security

BILL: CS/SB 1892

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Diaz

SUBJECT: Emergency Preparedness and Response Fund

DATE: March 23, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	MS	Fav/CS
2.			ATD	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1892 creates the Emergency Preparedness and Response Fund within the Executive Office of the Governor. The fund is to be used as a depository for moneys specifically appropriated to the fund. The moneys deposited in the fund are available as a primary funding source for the Governor for purposes of preparing or responding to an emergency that exceeds regularly appropriated funding sources.

In accordance with Article III, section 19(f)(2) of the Florida Constitution, the Emergency Preparedness and Response fund terminates on July 1, 2025, unless terminated sooner. Before the fund terminates the agency responsible for the administration of the trust fund and the Governor must recommend to the Legislature whether to recreate the fund or allow it to terminate.

As the Emergency Preparedness and Response Fund is a newly created trust fund, an affirmative vote of three-fifths of the membership of each house is required for passage.¹

The bill takes effect July 1, 2021.

¹ Section 215.3207, F.S.

II. Present Situation:

Overview

Florida has experienced an increase in the number, the severity, and the duration of all types of emergencies. When a State of Emergency is ordered by the Governor, predetermined plans become effective. One piece of the emergency plans is to provide resources necessary to protect and mitigate the effects of a disaster. Funding for the resources generally come from funds regularly appropriated to state and local agencies. If these funds are insufficient, the governor may make funds available by transferring and expending moneys appropriated for other purposes, or by transferring and expending moneys out of any unappropriated surplus funds or from the Budget Stabilization Fund. The state, affected local governments, and other eligible entities may apply to FEMA for grants for reimbursement or additional funds through the Florida Division of Emergency Management. FEMA then sends funds to the state which are deposited in the US Contributions Trust Fund from which payments are disbursed to the approved grantees. can stress the budgets of state and local governments.

General Revenue

The General Revenue Fund consists of all moneys received by the state from every source whatsoever, except for those funds designated to be deposited into trust funds or the budget stabilization fund. The moneys are to be expended pursuant to General Revenue Fund appropriations acts, transferred from the Budget Stabilization fund,² or maintained as unallocated general revenue. Unallocated general revenue is considered the working capital balance of the state and consists of moneys in the General Revenue Fund that are in excess of the amount needed to meet General Revenue Fund appropriations for the current year.³

Trust Funds

Establishment of Trust Funds

A trust fund may be created by law only by the Legislature and only if passed by a three-fifths vote of the membership of each house of the Legislature. In a separate bill for that purpose only⁴, each trust fund must be created by statutory language that specifies at least the following:

- The name of the trust fund.
- The agency or branch of state government responsible for administering the trust fund.
- The requirements or purposes that the trust fund is established to meet.
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.⁵

² See s. 215.32(2)(c), F.S.

³ Section 315.32(2)(a), F.S.

⁴ Not required for trust funds being re-created by the Legislature.

⁵ Section 215.3207, F.S.

Florida Constitution Requirement for Trust Funds

The Florida Constitution requires that state trust funds must terminate not more than four years after the effective date of the act which authorized the initial creation of the trust fund.⁶ By law, the Legislature may set a shorter time period for which any trust fund is authorized.⁷

Review of Trust Funds

The Legislature must review all state trust funds at least once every 4 years,⁸ prior to the regular session of the Legislature immediately preceding the date on which any executive or judicial branch trust fund is scheduled to be terminated,⁹ or such earlier date as the Legislature may specify.¹⁰

The agency that is responsible for the administration of the trust fund and either the Governor, for executive branch trust funds, or the Chief Justice, for judicial branch trust funds, must recommend to the President of the Senate and the Speaker of the House of Representatives whether the trust fund should be allowed to terminate or should be re-created.¹¹ Each recommendation must be based on a review of the purpose and use of the trust fund and a determination of whether the trust fund will continue to be necessary.¹² A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.¹³

When the Legislature terminates a trust fund, the agency or branch of state government that administers the trust fund must pay any outstanding debts or obligations of the trust fund as soon as practicable.¹⁴ The Legislature may also provide for the distribution of moneys in that trust fund. If no such distribution is provided, the moneys remaining after all outstanding obligations of the trust fund are met must be deposited in the General Revenue Fund.¹⁵

Trust Fund Operation

Trust funds consist of monies received by the state which under law or under trust fund agreement are segregated for a purpose authorized by law. The state agency or branch of state government receiving or collecting such moneys is responsible for their proper expenditure as provided by law.¹⁶

⁶ FLA. CONST. art. III, s. 19(f)(2).

⁷ *Id.*

⁸ Section 215.3208(1), F.S.

⁹ Pursuant to FLA. CONST. art. III, s. 19(f).

¹⁰ Section 215.3206(1), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Section 215.3208(2)(a), F.S.

¹⁵ Section 215.3208(2)(b), F.S.

¹⁶ Section 215.32(9)(b)1., F.S.

Emergency Management

Powers of the Governor

The Governor is responsible for meeting the dangers presented to this state and its people by emergencies.¹⁷ In the event of an emergency beyond local control, the Governor may assume direct operational control over all or any part of the emergency management functions within this state, and is authorized to delegate such powers as she or he may deem prudent.¹⁸ The Governor may issue executive orders, proclamations, and rules and may amend or rescind them. The executive orders, proclamations, and rules have the force and effect of law.¹⁹

The Governor declares a state of emergency by executive order or proclamation if an emergency is found to have occurred or that the occurrence or the threat is imminent.²⁰ The state of emergency continues until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist.²¹ The state of emergency is terminated by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.²² If at any time the Legislature by concurrent resolution terminates a state of emergency, the Governor shall issue an executive order or proclamation ending the state of emergency.²³

All executive orders or proclamations issued must indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make possible its termination.²⁴ An executive order or proclamation is promptly disseminated by means calculated to bring its contents to the attention of the general public. The order or proclamation is filed promptly with the Department of State and in the offices of the county commissioners in the counties to which the order or proclamation applies.²⁵²⁶

An executive order or proclamation of a state of emergency:

- Activates the emergency mitigation, response, and recovery aspects of the state, local, and interjurisdictional emergency management plans applicable to the political subdivision or area in question; and²⁷
- Is authority for the deployment and use of any forces to which the plan or plans apply and for the use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant the requirements of the State Emergency Management Act or any other provision of law relating to emergencies.²⁸
- Identifies whether the state of emergency is due to a minor, major, or catastrophic disaster.²⁹

¹⁷ Section 252.36(1)(a), F.S.

¹⁸ *Id.*

¹⁹ Section 252.36(1)(b), F.S.

²⁰ Section 252.36(2), F.S.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Unless the circumstances attendant upon the emergency prevent or impede such filing.

²⁶ Section 252.36(2), F.S.

²⁷ Section 252.36(3)(a), F.S.

²⁸ Section 252.36(3)(b), F.S.

²⁹ Section 252.36(3)(c), F.S.

- For a major or catastrophic disaster, the proclamation is authority for a health care practitioner licensed in another state to assist in providing health care in the disaster area according to the provisions specified in the proclamation.³⁰
- For a catastrophic disaster, the proclamation constitutes a formal request for mobilization of the military, which is communicated to the President of the United States.³¹

Financing

The policy of the state is that funds to meet emergencies must always be available.³² The first recourse for funding is to be made to funds regularly appropriated to state and local agencies.³³ If the Governor finds that the demands placed upon these funds in coping with a particular disaster are unreasonably great, she or he may make funds available:

- By transferring and expending moneys appropriated for other purposes;
- By transferring and expending moneys out of any unappropriated surplus funds; or
- From the Budget Stabilization Fund.³⁴

Following the expiration or termination of the state of emergency, the Governor may transfer moneys with a budget amendment, subject to approval by the Legislative Budget Commission, to satisfy the budget authority granted for such emergency.³⁵ The Governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency prevention, mitigation, preparedness, response, or recovery should not be construed to be limited by these financing provisions.³⁶

If the Federal Government³⁷ offers to the state³⁸ services, equipment, supplies, materials, or funds by way of gift, grant, or loan for the purposes of emergency management, the state³⁹, or the political subdivision,⁴⁰ may accept the offer. Upon acceptance, the division or the presiding officer or governing body of the political subdivision may authorize receipt of the gift, grant, or loan on behalf of the state or the political subdivision, subject to the terms of the offer and the rules and regulations of the agency making the offer.⁴¹

Whenever any person, firm, or corporation offers to the state⁴² services, equipment, supplies, materials, or funds by way of gift, grant, loan, or other agreement for the purpose of emergency management, the state⁴³ or the political subdivision⁴⁴ may accept the offer. Upon acceptance, the division or the presiding officer or governing body of the political subdivision may authorize

³⁰ Section 252.36(3)(c)1., F.S.

³¹ Section 252.36(3)(c)2., F.S.

³² Section 252.37(1), F.S.

³³ Section 252.37(2), F.S.

³⁴ *Id.*

³⁵ Section 252.37(2), F.S.

³⁶ Section 252.37(3), F.S.

³⁷ Or any agency or officer of the Federal Government.

³⁸ Or to any political subdivision of the state.

³⁹ Acting through the division.

⁴⁰ Acting with the consent of the Governor or the Governor's authorized representative.

⁴¹ Section 252.37(4)(a), F.S.

⁴² Or to any political subdivision of the state.

⁴³ Acting through the division.

⁴⁴ Acting through its governing body or a local emergency management agency.

receipt of the gift, grant, or loan on behalf of the state or the political subdivision, subject to the terms of the offer.⁴⁵

Unless otherwise specified in the General Appropriations Act:

- Whenever the state accepts financial assistance from the Federal Government or its agencies under the federal Public Assistance Program and the financial assistance is conditioned upon a requirement for matching funds, the state shall provide the entire match requirement for state agencies and one-half of the required match for grants to local governments. The affected local government is required to provide one-half of the required match prior to receipt of such financial assistance.⁴⁶
- The Executive Office of the Governor may approve a waiver, subject to the requirement for legislative notice and review under s. 216.177, F.S., of all or a portion of the required match for public assistance projects for local governments if the Executive Office of the Governor determines that such a match requirement cannot be provided, or that doing so would impose a documented hardship on the local government, and if the local government applies for the waiver within the first 18 months after the disaster is declared.⁴⁷

Whenever the state accepts financial assistance from the Federal Government or its agencies under the federal Hazard Mitigation Assistance Grant Program and the financial assistance is conditioned upon a requirement for matching funds, the eligible subgrantee recipient is required to provide the full amount of the required match prior to receipt of the financial assistance unless otherwise specified in the General Appropriations Act.⁴⁸

Federal Emergency Management Agency (FEMA)

Public Assistance (PA) is FEMA's grant program that provides funds to assist communities responding to and recovering from major disasters or emergencies declared by the President. The program provides funding for emergency assistance to save lives and protect property, and assists with funding for permanently restoring community infrastructure affected by a federally declared incident.⁴⁹ Eligible applicants include states, federally recognized tribal governments, U.S. territories, local governments, and certain private non-profit (PNP) organizations.^{50 51}

FEMA processes PA grant funding according to the type of work the applicant undertakes. Eligible work must be required as a result of the declared incident, be located in the designated area, be the legal responsibility of the applicant, and be undertaken at a reasonable cost.⁵² Eligible work is classified into the following categories:

⁴⁵ Section 252.37(4)(b), F.S.

⁴⁶ Section 252.37(5)(a), F.S.

⁴⁷ Section 252.37(5)(b), F.S.

⁴⁸ Section 252.37(6), F.S.

⁴⁹ 42 U.S.C. s. 5170(b) (2019).

⁵⁰ PNPs must have an effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

⁵¹ For a qualified PNP-operated facility to be eligible for assistance, the PNP must demonstrate the facility provides a critical service or provides a non-critical, but essential government service such as one used for an educational, utility, emergency, or medical purpose and is open to the general public. *See* 42 U.S.C. s. 5172 (2019) and 44 CFR s. 206.221(e) (2001).

⁵² 42 U.S.C. s. 5170(b) (2019).

- Emergency Work⁵³
 - Category A: Debris removal
 - Category B: Emergency protective measures
- Permanent Work
 - Category C: Roads and bridges
 - Category D: Water control facilities
 - Category E: Public buildings and contents
 - Category F: Public utilities
 - Category G: Parks, recreational, and other facilities.⁵⁴

The federal share of assistance will not be less than 75 percent of the eligible cost for emergency measures and permanent restoration. The state determines how the non-federal share of 25 percent will be dispersed to its applicants. The state is responsible for managing the funds obligated to them by FEMA, including disbursement to applicants. FEMA will continue to monitor the recovery progress to ensure the timely delivery of eligible assistance, and compliance with federal laws and regulations.⁵⁵

Florida Division of Emergency Management Public Assistance Grant Program

According to the Florida Division of Emergency Management website⁵⁶:

The State of Florida manages this program as the grantee from FEMA (grantor) for all sub-grants awarded to local eligible jurisdictions and agencies within the State of Florida. To be eligible for assistance from this grant program, prospective applicants must fill out a Request for Public Assistance (RPA) through the State of Florida's Public Assistance Web Portal, www.FloridaPA.org.

III. Effect of Proposed Changes:

CS/SB 1892 creates the Emergency Preparedness and Response Fund within the Executive Office of the Governor. The fund is to be used as a depository for moneys specifically appropriated to the fund. The moneys deposited in the fund are available as a primary funding source for the Governor for purposes of preparing or responding to an emergency that exceeds regularly appropriated funding sources.

In accordance with Article III, section 19(f)(2) of the Florida Constitution, the Emergency Preparedness and Response fund terminates on July 1, 2025, unless terminated sooner. Before the fund terminates, the agency responsible for the administration of the trust fund and the Governor must recommend to the Legislature whether to recreate the fund or allow it to terminate.

⁵³ *Id.*

⁵⁴ FEMA, *Public Assistance Program and Policy Guide*, available at <https://www.fema.gov/assistance/public>. (last visited March 9, 2021).

⁵⁵ FEMA, *Public Assistance FACT SHEET*, available at https://www.fema.gov/sites/default/files/2020-07/fema_public-assistance-fact-sheet_10-2019_0.pdf (last visited Mar. 9, 2021).

⁵⁶ Fl. Div. of Emergency Management, *Public Assistance Grant Program*, available at <https://www.floridadisaster.org/dem/recovery/public-assistance-program/> (last visited Mar. 9, 2021).

As the Emergency Preparedness and Response Fund is a newly created trust fund, an affirmative vote of three-fifths of the membership of each house is required for passage.⁵⁷

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The Florida Constitution imposes special restrictions on trust funds. A trust fund is a fund created by law for a specific use and having specific funding sources.

Article III, subsection 19(f) of the Florida Constitution prohibits the Legislature from creating or re-creating a trust fund unless the trust fund is created or re-created by law approved by a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only. State trust funds must terminate within 4 years after the effective date of the act authorizing the initial creation of the trust fund.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁵⁷ Section 215.3207, F.S.

C. Government Sector Impact:

Having a fund that the Governor may use for necessary spending during a declared emergency may preserve the monies otherwise appropriated in General Revenue and other Trust Funds.

VI. Technical Deficiencies:

Only three types of funds are designated by statute: general revenue, trust funds, and the budget stabilization fund. The purpose of this fund is best defined as a trust fund. Therefore, including the term “trust” in the title would clarify that the Emergency Preparedness and Response Fund is a trust fund.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 252.3711 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.)

CS by Military and Veterans Affairs, Space, and Domestic Security on March 23, 2021:

The CS for SB 1892 revises the purpose of the fund from being used as a depository for reimbursements of state expenditures received from the Federal Emergency Management Agency, unless otherwise appropriated by the Legislature, and for other moneys specifically appropriated to being a depository for moneys specifically appropriated to the fund.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2021	.	
	.	
	.	
	.	

The Committee on Military and Veterans Affairs, Space, and Domestic Security (Diaz) recommended the following:

Senate Amendment

Delete lines 18 - 20
and insert:
moneys specifically appropriated

By Senator Diaz

36-01466A-21

20211892__

1 A bill to be entitled
 2 An act relating to the Emergency Preparedness and
 3 Response Fund; creating s. 252.3711, F.S.; creating
 4 the Emergency Preparedness and Response Fund within
 5 the Executive Office of the Governor; providing for
 6 the deposit and use of funds; providing for future
 7 review and termination of the fund; providing an
 8 effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Section 252.3711, Florida Statutes, is created
 13 to read:
 14 252.3711 Emergency Preparedness and Response Fund.—
 15 (1) The Emergency Preparedness and Response Fund is created
 16 within the Executive Office of the Governor.
 17 (2) The fund is established for use as a depository for
 18 reimbursements of state expenditures received from the Federal
 19 Emergency Management Agency, unless otherwise appropriated by
 20 the Legislature, and for other moneys specifically appropriated
 21 to the fund. The moneys deposited in the fund are available as a
 22 primary funding source for the Governor for purposes of
 23 preparing or responding to an emergency that exceeds regularly
 24 appropriated funding sources.
 25 (3) In accordance with s. 19(f)(2), Art. III of the State
 26 Constitution, the Emergency Preparedness and Response Fund
 27 shall, unless terminated sooner, be terminated on July 1, 2025.
 28 Before its scheduled termination, the fund shall be reviewed as
 29 provided in s. 215.3206(1) and (2).

Page 1 of 2

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36-01466A-21

20211892__

30 Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



SENATOR MANNY DIAZ, JR.
36th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy Chair
Appropriations Subcommittee on
Education Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Commerce and Tourism
Rules

March 5, 2021

Honorable Senator Tom A. Wright
Chair
Committee on Military and Veterans Affairs, Space, and Domestic Security

Honorable Chair Wright,

I respectfully request Senate Bill Number 1892 Emergency Preparedness and Response Fund be placed on the next committee agenda.

Sincerely appreciate your support.

A handwritten signature in black ink, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: Diana Caldwell, Staff Director
Lois Graham, Committee Administrative Assistant
Carolyn Grzan, Legislative Assistant

REPLY TO:

- ☐ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- ☐ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore