

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1595 Emergency Preparedness and Response Fund

**SPONSOR(S):** Appropriations Committee, Pandemics & Public Emergencies Committee, Williamson

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1892

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Pandemics & Public Emergencies Committee	17 Y, 0 N, As CS	Nations	Dearden
2) Appropriations Committee	24 Y, 0 N, As CS	Harrington	Pridgeon

### SUMMARY ANALYSIS

The Governor is vested with broad powers for emergency management, including the power to declare a state of emergency through the issuance of executive orders and proclamations. During an emergency, the Governor is authorized to utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the emergency. The policy of the state is that funds to meet emergencies must always be available; the Governor must first look to funds regularly appropriated to state and local agencies. Thereafter, the Governor is authorized to transfer and expend funds appropriated for other purposes, unappropriated surplus funds, and funds in the Budget Stabilization Fund. Such funds are appropriated through emergency budget amendments that are approved by the Governor and posted on the appropriations ledger. There is no specific Trust Fund available for emergency spending during a declared state of emergency.

The bill creates the Emergency Preparedness and Response Fund (EPR Fund) within the Executive Office of the Governor as the primary funding source available to the Governor during a declared state of emergency. The bill provides that the EPR Fund is established for use as a depository for moneys specifically appropriated to the fund.

During an emergency, the bill should reduce the need for the Governor to access funds appropriated for other purposes, unappropriated surplus funds, and funds in the Budget Stabilization Fund. The bill does not appear to impact local governments.

**Art. III, s. 19(f) of the Florida Constitution requires a three-fifths vote of the members present and voting for final passage of a newly created or re-created trust fund. The bill creates a trust fund; thus, it requires a three-fifths vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

Chapter 252, F.S., governs emergency management. It confers upon the Governor, the Division of Emergency Management (division),<sup>1</sup> and the governing body of each county and municipality certain emergency powers in the event of emergencies<sup>2</sup> and disasters<sup>3</sup> resulting from natural,<sup>4</sup> technological,<sup>5</sup> or manmade<sup>6</sup> causes to ensure preparations of the state will be adequate to deal with, reduce vulnerability to, and recover from such emergencies and disasters; to provide for the common defense and to protect the public peace, health, and safety; and to preserve the lives and property of the people of the state.<sup>7</sup>

The Governor, the division, and counties and municipalities have specific emergency powers and authority granted to them in the event of an emergency. The individual powers are broad, but also include specific parameters in which they may be executed.

#### Governor

The State Emergency Management Act<sup>8</sup> authorizes the Governor to assume or delegate direct operational control over all or any part of emergency management functions in the event of an emergency.<sup>9</sup> This authority includes issuing executive orders, proclamations, and rules that have the force and effect of law.<sup>10</sup> The Act specifically authorizes the Governor to use all resources of state government and counties and municipalities of the state as reasonably necessary to cope with the emergency.<sup>11</sup> Although the emergency powers reside in the Governor, the Governor may delegate certain powers to the State Coordinating Officer to manage and coordinate emergency efforts.<sup>12</sup>

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<sup>1</sup> The division is established within the Executive Office of the Governor as a separate budget entity. It is responsible for all professional, technical, and administrative support functions necessary to carry out its responsibilities under part I of ch. 252, F.S. The director of the division is appointed by and serves at the pleasure of the Governor, and is the head of the division for all purposes. Section 14.2016(1), F.S.

<sup>2</sup> "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. Section 252.34(4), F.S.

<sup>3</sup> "Disaster" means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States. Section 252.34(2), F.S.

<sup>4</sup> "Natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. Section 252.34(8), F.S.

<sup>5</sup> "Technological emergency" means an emergency caused by technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident. Section 252.34(10), F.S.

<sup>6</sup> "Manmade emergency" means an emergency caused by an action against persons or society, including, but not limited to, enemy attack, sabotage, terrorism, civil unrest, or other action impairing the orderly administration of government. Section 252.34(7), F.S.

<sup>7</sup> Section 252.32, F.S.

<sup>8</sup> Sections 252.31-252.60, F.S., are known and cited as the "State Emergency Management Act."

<sup>9</sup> Section 252.36(1)(a), F.S.

<sup>10</sup> Section 252.36(1)(b), F.S.

<sup>11</sup> Section 252.36(5)(b), F.S.

<sup>12</sup> The State Coordinating Officer (SCO) is the authorized representative of the Governor to manage and coordinate state and local emergency response and recovery efforts. The SCO is provided the authority to commit any and all state resources necessary to cope with the emergency and the authority to exercise those powers in accordance with ss. 252.36(3)(a) and 252.36(5)-(10), F.S.

The Act, in part, authorizes the Governor to:

- Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of any state agency, if strict compliance would in any way prevent, hinder, or delay necessary action in coping with the emergency.
- Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services.
- Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles; however, the Governor may not seize, take, or confiscate firearms that are lawfully possessed, unless a person is engaged in the commission of a criminal act.
- Make provision for the availability and use of temporary emergency housing.
- Take effective measures for limiting or suspending lighting devices and appliances, gas and water mains, electric power distribution, and all other utility services in the general public interest.
- Take measures concerning the conduct of civilians, the movement and cessation of movement of pedestrian and vehicular traffic at certain times, the calling of public meetings and gatherings, and the evacuation and reception of the civilian population, as provided in the emergency management plan of the state and counties and municipalities.
- Authorize businesses and their employees who sell commodities<sup>13</sup> to exceed the times of curfews for ensuring that the supplies of commodities are made available to the public and direct local law enforcement to assist and accommodate those businesses and their employees in ensuring that commodities are available in coping with the emergency.<sup>14</sup>

The Governor must delegate emergency responsibilities to officers and agencies of the state and to counties and municipalities prior to an emergency and threat of an emergency and must use the services and facilities of existing officers and agencies of the state and counties and municipalities as the primary emergency management forces of the state. All such officers and agencies must cooperate with and extend their services and facilities to the division, as it may require.<sup>15</sup>

Finally, during the continuance of a state of emergency, the Governor is commander in chief of the Florida National Guard and all forces available for emergency duty.<sup>16</sup>

#### Division of Emergency Management

The division, which is established within the Executive Office of the Governor, is responsible for all professional, technical, and administrative support functions necessary to carry out its responsibilities and emergency powers under part I of ch. 252, F.S. The director of the division is appointed by and serves at the pleasure of the Governor, and is the head of the division for all purposes.

The division must administer programs to rapidly apply all available aid to communities stricken by an emergency.<sup>17</sup> The division is responsible for maintaining the statewide comprehensive plan for emergency management and coordinating efforts of the federal government with state and local

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<sup>13</sup> Section 501.160(1)(a), F.S., defines the term “commodity” to mean any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency.

<sup>14</sup> Section 252.36(5), F.S. Other powers include the power to commandeer or utilize any private property if found necessary to cope with the emergency; direct and compel the evacuation of all or part of the population from any stricken or threatened area if deemed necessary for the preservation of life or other emergency mitigation, response, or recovery; prescribe routes, modes of transportation, and destinations in connection with evacuation; control ingress and egress to and from an emergency area, the movement of persons within the area, and the occupancy of premises therein; authorize the use of forces already mobilized as the result of an executive order, rule, or proclamation to assist the private citizens of the state in cleanup and recovery operations during emergencies when proper permission to enter onto or into private property has been obtained from the property owner; and by executive order, authorize the operator of solid waste disposal facilities to extend operating hours to ensure the health, safety, and welfare of the general public.

<sup>15</sup> Section 252.36(8), F.S.

<sup>16</sup> Section 252.36(4), F.S.

<sup>17</sup> Section 14.2016(1), F.S.

government and private agencies.<sup>18</sup> In addition, the division is responsible for state emergency planning with various responsibilities, including, in part:

- Preparing a state comprehensive emergency management plan, which is adopted as a rule pursuant to the Administrative Procedure Act.
- Adopting standards and requirements for county emergency management plans, assisting counties and municipalities in preparing and maintaining the plans, and periodically reviewing the plans for consistency with state standards.
- Cooperating with the President, the heads of the Armed Forces, and various federal emergency management agencies.
- Planning for and either procuring supplies, medicines, materials, and equipment or entering into a memorandum of agreement or open purchase orders to ensure availability of such supplies.
- Reporting biennially to the Governor and Legislature the status of emergency management capabilities of the state and its political subdivisions.
- Creating, implementing, administering, adopting, amending, and rescinding rules, programs, and plans needed to carry out emergency management.
- Doing other things necessary, incidental, or appropriate for implementing emergency management.<sup>19</sup>

The division is further responsible for ensuring the continuing economic resilience of communities impacted by disasters by establishing a statewide system to facilitate the transport and distribution of essentials in commerce.<sup>20</sup> The term “essentials” means goods that are consumed or used as a direct result of a declared emergency, or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.<sup>21</sup>

To fulfill these requirements, the division established the State Emergency Response Team (SERT). The SERT is composed of agency-appointed Emergency Coordination Officers and staff from state agencies, volunteer and non-governmental organizations that operate under the direction and control of the Governor and State Coordinating Officer. Operationally, the SERT is grouped into 18 Emergency Support Functions (ESFs) that carry out coordination and completion of response and recovery activities in the State Emergency Operation Center during an emergency or disaster. The ESFs are grouped by function rather than agency, with each ESF headed by a primary state agency and supported by additional state agencies.<sup>22</sup>

#### Declaring a State of Emergency

The Governor is authorized to declare a state of emergency by executive order or proclamation when an emergency has occurred or the occurrence or threat thereof is imminent.<sup>23</sup> A declared state of emergency is limited to 60 days, unless renewed by the Governor or terminated by the Legislature.<sup>24</sup> An executive order of a state of emergency must indicate the nature of the emergency, area or areas threatened, and conditions that have brought the emergency about or that make possible its termination.<sup>25</sup> Executive orders must be promptly disseminated to bring its contents to the attention of the general public and, unless the emergency prevents or impedes, must be filed promptly with the Department of State and in the offices of the county commissioners in the counties the order applies.<sup>26</sup>

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<sup>18</sup> *Id.* and s. 252.35(1), F.S.

<sup>19</sup> See s. 252.35, F.S.

<sup>20</sup> Section 252.359(1), F.S.

<sup>21</sup> Section 252.359(2), F.S.

<sup>22</sup> ESF 8 is Health and Medical. The primary state agency for this ESF is the Department of Health. One aspect of this ESFs core mission is disease control, including coordinated surveillance, outbreak investigations, epidemiological analysis, and appropriate laboratory testing.

<sup>23</sup> Section 252.36(2), F.S.

<sup>24</sup> Section 252.36(2), F.S.

<sup>25</sup> Section 252.36(2), F.S.

<sup>26</sup> Section 252.36(2), F.S.

### Emergency Spending Authority

The policy of the state is that funds to meet emergencies must always be available.<sup>27</sup> Florida law provides that it is the intent that first recourse be made to funds regularly appropriated to state and local agencies. If the Governor finds that the demands placed upon these funds in coping with a particular state emergency are unreasonably great, the Governor may make funds available by transferring and expending moneys appropriated for other purposes, unappropriated surplus funds, and funds in the Budget Stabilization Fund.<sup>28</sup> Such funds, when accessed, are appropriated through emergency budget amendments that are approved by the Governor and posted on the appropriations ledger. There is no dedicated source for the Governor to use during an emergency.

### **Effect of the Bill**

The bill creates the Emergency Preparedness and Response Fund (EPR Fund) within the Executive Office of the Governor as the primary funding source available to the Governor during a declared state of emergency. The bill provides that the EPR Fund is established for use as a depository for moneys specifically appropriated to the fund.

During an emergency, the bill should reduce the need for the Governor to access funds appropriated for other purposes, unappropriated surplus funds, and funds in the Budget Stabilization Fund.

#### **B. SECTION DIRECTORY:**

Section 1. creates s. 252.3711, F.S., creating the Emergency Preparedness and Response Fund within the Executive Office of the Governor.

Section 2. provides an effective date of July 1, 2021.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

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<sup>27</sup> Section 252.37(1), F.S.

<sup>28</sup> Section 252.37(2), F.S.

D. FISCAL COMMENTS:

Because the EPR Fund provides a primary source for funds during a declared state of emergency, the bill should reduce, at least to the extent of funds available in the EPR Fund, the need for the Governor to access funds appropriated for other purposes, unappropriated surplus funds, and funds in the Budget Stabilization Fund. The proposed House General Appropriations Act (GAA) contingently appropriates \$1 billion to the EPR Fund based upon the receipt of federal stimulus funds related to the Covid-19 relief fund.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

Article III, s. 19(f) of the State Constitution requires all newly created trust funds to terminate not more than four years after the initial creation of the fund. In addition, the State Constitution requires a newly create or re-created trust fund to be adopted by three-fifths vote of the membership in each house of the Legislature in a separate bill for the sole purpose of creating or re-creating the fund. This bill creates a trust fund; thus, it requires a three-fifths vote for final passage. The bill also provides for the termination of the fund after four years.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 24, 2021, the Pandemics & Public Emergencies Committee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute removed the provision that provided that FEMA reimbursement moneys are deposited into EPR Fund.

On March 31, 2021, the Appropriations Committee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute clarifies that the Governor can access money in the EPR Fund during a declared state of emergency.

The analysis is drafted to the committee substitute.