

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 Rules

BILL: CS/CS/SB 2006

INTRODUCER: Rules Committee; Appropriations Committee; and Senator Burgess

SUBJECT: Emergency Management

DATE: April 7, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Caldwell</u>	<u>MS</u>	Favorable
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>AP</u>	Fav/CS
3.	<u>Stallard</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 2006 amends the State Emergency Management Act to better address the threat posed by a pandemic or other public health emergency.

The bill:

- Specifies that the State Emergency Management Act applies to pandemics and other public health emergencies.
- Requires the Department of Health to create a state public health emergency management plan, and requires the Division of Emergency Management (division) to incorporate that plan into the comprehensive emergency management plan.
- Requires the division to acquire and maintain an inventory of state-owned personal protective equipment.
- Amends several of the division's statutory duties to specify that those duties pertain to public health emergencies. For example, the bill requires the division's biennial report to the Legislature and the Governor to include the state's capability to respond to a public health emergency.
- Requires a state contract with a provider of care for a person with special needs to include the contractor's procedure for providing essential services during a public health emergency.
- Requires the division's statewide emergency shelter plan to address sheltering Floridians during a pandemic that necessitates physical distancing.
- Requires medical examiners to certify deaths and to assist the State Health Officer in identifying and reporting deaths when requested.

- Provides additional oversight and transparency regarding exercises of the executive branch’s emergency powers, including:
 - Limiting emergency orders, proclamations, and rules to 60-day durations that can be renewed as long as the emergency conditions persist.
 - Requiring the Governor, if he or she closes schools or businesses, to state specific reasons why the schools or businesses need to close and reassess the closure regularly.
 - Requiring the Governor and state agencies to file emergency declarations or orders with the Division of Administrative Hearings.
 - Authorizing the Legislature to pass a concurrent resolution to terminate orders and directives issued under a state of emergency, instead of only the state of emergency itself.
 - Limiting suspension of regulatory statutes to 60-day durations that can be renewed for 60-day periods as long as the emergency conditions persist.
 - Requiring a state agency to submit to the Legislature a detailed spending plan, when possible, before accepting federal grants or private donations.
 - Requires the Auditor General to conduct financial and compliance audits of emergency state contracts and expenditures.

Regarding county or municipal measures that address a purported emergency, the bill:

- Requires the governmental entity imposing an ordinance or other measure that deprives a person of a right, a liberty, or property, to prove that the measure is “narrowly tailored” and serves a “compelling governmental interest” through the “least intrusive means”;
- Authorizes the Governor or Legislature to invalidate a city or county measure that “unnecessarily restricts a constitutional right, fundamental liberty, or statutory right”; and
- Provides that a city or county emergency order will automatically expire 10 days after its issuance unless extended by a majority vote of the political subdivision's governing body.

Related to expenditures for declared states of emergency, the bill:

- Requires funding for the resources to respond to a disaster to first come from funds specifically appropriated to state and local agencies for disaster relief or response.
- Authorizes the Governor to request the Legislative Budget Commission to approve a request to appropriate additional funds to the Emergency Preparedness and Response Fund.

These portions of the bill are effective upon the passage of SB 1982 or similar legislation being enacted to create the Emergency Preparedness and Response Fund.

The bill provides that all executive orders issued by the Governor before 60 days before the effective date of the bill expire as of the effective date of the bill. The orders can be renewed for 60-day periods. The bill also requires the Department of Business and Professional Regulation to make recommendations to the Legislature by September 30, 2021, related to issues that should be codified into law.

The bill is not expected to have a significant negative fiscal impact on state agencies.

The bill takes effect July 1, 2021.

II. Present Situation:

COVID-19

The COVID-19 pandemic has drastically affected the state of Florida since the outbreak began affecting the United States in early 2020. The toll on individuals, businesses, and the economy has been catastrophic. According to the Department of Health, over 2 million positive COVID-19 cases have been diagnosed in the state, over 84,000 residents have been hospitalized, and over 33,000 Florida residents have died of the virus.¹

Governor DeSantis issued Executive Order No. 20-52 on March 9, 2020, declaring a state of emergency and issuing guidelines to halt, mitigate, or reduce the spread of the outbreak. The order has been extended six times, most recently by Executive Order No. 21-45, issued on February 26, 2021.² Acting under the authority of the order declaring the state of emergency, in Fiscal Year 2020-2021, there have been over \$1 billion in budget amendments to respond to the COVID-19 crisis.³

State Emergency Management Act

The State Emergency Management Act, ch. 252, F.S., was enacted to be the legal framework for this state's emergency management activities, recognizing the state's vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters.⁴ In order to reduce the state's vulnerability to these circumstances and to prepare to respond to them, the act promotes the state's emergency readiness through enhanced coordination, long-term planning, and adequate funding.⁵

The act creates the Division of Emergency Management (division) within the Executive Office of the Governor and grants the division with powers and duties necessary to mitigate the vulnerability of life, property, and economic prosperity due to natural and manmade disasters.⁶ The responsibilities of the division include:

- Carrying out the State Emergency Management Act;
- Maintaining a comprehensive statewide program of emergency management; and
- Coordinating with efforts of the federal government with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management.⁷

¹ Florida Department of Health, Division of Disease Control and Health Protection, *Florida COVID-19 Dashboard*, available at <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429> (last visited Mar. 27, 2021).

² A state of emergency declared under the State Emergency Management Act may not last for more than 60 days unless it is renewed by the Governor. Section 252.36(2), F.S.

³ See Office of Economic and Demographic Research, Revenue Estimating Conference, *General Revenue Fund Financial Outlook Statement*, (adopted December 21, 2020) available at http://edr.state.fl.us/Content/revenues/outlook-statements/general-revenue/201221_GRoutl.pdf (last visited Mar. 27, 2021).

⁴ Section 252.311(1), F.S.

⁵ Section 252.311(2), F.S.

⁶ Sections 252.32(1)(a) and 252.34(3), F.S.

⁷ Section 252.35(1) and (2), F.S.

The act also delineates the Governor’s authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. This authority is subject in some aspects to the Legislature’s authority. For example, the Legislature may pass a concurrent resolution to end a state of emergency declared by the Governor.

The remainder of the Present Situation is set forth in the Effect of Proposed Changes section to provide immediate context for the changes made by the bill.

III. Effect of Proposed Changes:

State Emergency Management Act

Present Situation

While the State Emergency Management Act addresses appropriate response, recovery, and mitigation activities related to Florida’s vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters, the act itself does not specifically address public health emergencies, such as COVID-19. However, the Florida Supreme Court concluded in *Abramson v. Desantis* that the COVID-19 pandemic is a “natural emergency” within the meaning of the State Emergency Management Act.⁸

Effect of Proposed Changes

Several sections of the bill amend current law to reflect the intent for the state’s emergency management plans to address Florida’s vulnerability to public health emergencies and to emergencies of an extended nature.

Section 2 of the bill amends s. 252.311, F.S., to provide the act’s legislative intent includes:

- Preparing for and efficiently responding to public health emergencies.
- Minimizing the negative effects of a pandemic or other extended state of emergencies. These negative effects include school and business closures, which can negatively impact families and the economy.
- Transparency of all aspects of emergency preparedness, response, and recovery.

Section 3 of the bill amends s. 252.34(8), F.S., to define “public health emergency” and personal protective equipment:

- “Public health emergency” means any occurrence, or threat thereof, whether natural or manmade, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters, declared as a public health emergency by the State Health Officer.
- “Personal protective equipment” means protective clothing or equipment designed to protect an individual person from injury or the spread of infection.

⁸ *Abramson v. Desantis*, No. SC 20-646, 2020 WL 3464376 (Fla. June 25, 2020).

Public Health Emergencies

Present Situation

The State Health Officer⁹ is exclusively responsible for declaring a “public health emergency,” which includes natural or manmade occurrences that result or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.¹⁰ Before declaring a public health emergency, the State Health Officer must, to the extent possible, consult with the Governor and notify the Chief of Domestic Security.¹¹ A public health emergency may not continue longer than 60 days unless the Governor concurs in the renewal of the declaration.¹²

The declaration empowers the State Health Officer to take actions necessary to protect the public health, including, but not limited to:

- Directing manufacturers of prescription drugs or over-the-counter drugs to give priority shipping of specified drugs to certain pharmacies and hospitals;
- Directing pharmacies to compound bulk prescription drugs;
- Temporarily reactivating inactive licenses of certain healthcare professionals; and
- Ordering an individual to be examined, tested, vaccinated, treated, isolated, or quarantined.¹³

The Department of Health (DOH) has the duty and authority to declare, enforce, modify, and abolish the isolation and quarantine of persons, animals, and premises as circumstances indicate for controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health (except for specified diseases). Any order issued by DOH must be immediately enforceable by a law enforcement officer under s. 381.0012, F.S.¹⁴

Effect of Proposed Changes

Section 17 of the bill amends s. 381.00315, F.S., to require the DOH to prepare and maintain a state public health emergency management plan to serve as a comprehensive guide to public health emergency response in the state. The DOH must develop the plan in collaboration with the division, other executive agencies with functions relevant to public health emergencies, district medical examiners, and national and state public health experts.

The plan must:

- Integrate and coordinate with the public health emergency plans and programs of the federal government.
- Address each element of public health emergency planning and incorporate public health and epidemiology best practices to ensure the state is prepared for every foreseeable public health emergency.

⁹ The head of the Department of Health is the Surgeon General and the State Health Officer. Section 20.43(2), F.S.

¹⁰ Section 381.00315, F.S.

¹¹ The Chief of Domestic Security is the executive director of the Department of Law Enforcement or his or her designee. Section 943.0311(1), F.S.

¹² Section 381.00315(1)(c), F.S.

¹³ Section 381.00315(1)(c)1., F.S.

¹⁴ Section 381.00315(4), F.S.

- Include an assessment of state and local public health infrastructure, including information systems, physical plant, commodities and human resources.
- Include an analysis of the infrastructure necessary to achieve the level of readiness proposed by the plan for short- and long-term public health emergencies.

The public health emergency management plan must be incorporated into the state comprehensive emergency management plan. The initial plan must be submitted to the division by July 1, 2022. The DOH must review the plan and update it, as necessary, after the termination of each declared public health emergency or every five years, whichever is sooner.

State Comprehensive Emergency Management Plan

Present Situation

At the top of the division's statutory list of duties is the creation of a state comprehensive emergency management plan.¹⁵ The plan must be integrated into and coordinated with the plans and programs of the federal government. The plan is submitted to the Senate President, the Speaker of the House of Representatives, and the Governor by February 1 of every even-numbered year.¹⁶

The plan must:

- Address the need for coordinated and expeditious deployment of the National Guard and other state resources.
- Establish a system of communications and warnings for the public and emergency management agencies to be used during natural disasters and other emergencies.
- Establish guidelines and schedules for annual exercises that evaluate the ability of the state and its political subdivisions to respond to disasters and support local emergency management agencies.
- Assign lead and support responsibilities to state agencies and personnel.¹⁷

Additionally, the plan must include components for evacuation, sheltering, and post-disaster relief.¹⁸

Effect of Proposed Changes

Section 4 of the bill amends s. 252.35, F.S., requiring the division to include in the plan the public health emergency management plan developed by the DOH. Related to the requirement for a communications and warning system, the bill specifies that the system includes warning of developing public health emergency situations.

¹⁵ Section 252.35(2)(a), F.S.

¹⁶ Section 252.35(2), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

Other Division Duties under the State Emergency Management Act

Present Situation

In addition to the creation of the state comprehensive emergency management plan, the division has numerous duties and responsibilities, including:

- Cooperating with the President, the heads of the Armed Forces, the various federal emergency management agencies, and the officers and agencies of other states in matters pertaining to emergency management;
- Instituting statewide public awareness programs, including an intensive public educational campaign on emergency preparedness issues;
- Delegating, as necessary and appropriate, authority provided in the State Emergency Management Act and providing for the subdelegation of this authority;
- Reporting to the President of the Senate, the Speaker of the House of Representatives, and the Governor, no later than February 1 of every odd-numbered year, the status of the emergency management capabilities of the state and its political subdivisions;
- Maintaining, in coordination with local emergency management agencies, a registry of persons with special needs located within the jurisdiction of the local agency; and
- Maintaining a list of public shelters and reporting a statewide emergency shelter plan biennially.¹⁹

Further, s. 242.359, F.S., requires the division to ensure that emergency supplies are available to meet the needs of residents during a declared emergency and to establish a statewide system to facilitate the distribution of essentials in commerce. The section defines essentials of commerce as “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.”

Effect of Proposed Changes

Section 4 of the bill amends s. 252.35, F.S., to also require the division to:

- Cooperate with federal or state health agencies in matters pertaining to emergency management;
- Include information on public health emergencies in its statewide public awareness and educational campaigns;
- Limit any delegation of authority during a public health emergency to no more than 60 days, which may be renewed as necessary; and
- Include the Chief Justice of the Florida Supreme Court when submitting the biennial report on the state’s emergency preparedness and include in the report the state’s emergency management capabilities related to public health emergencies, as determined in collaboration with the DOH.

Section 5 of the bill amends s. 252.355, F.S., to require the division to maintain information on options that provide for physical distancing during a public health emergency, as determined by the State Health Officer, for sheltering persons with special needs.

¹⁹ Sections 252.35(2)(b)-(y), 252.355, and 252.385(2), F.S.

Related to personal protective equipment, **section 4** requires the division to acquire and maintain a supply of personal protective equipment owned by the state for use by state agencies and to assist local governments and the private sector, when determined by the State Coordinating Officer,²⁰ to meet safety needs during a declared emergency. The division must regularly inventory the supply and project the need for additional equipment. To maintain the supply and replace expired items, subject to appropriation, the division must have a standardized schedule in place. The division must provide an annual inventory report by December 31 to the President of the Senate, Speaker of the House of Representatives, the Governor, and the Chief Justice of the Supreme Court. **Section 7** of the bill amends s. 252.359, F.S., to provide that “essentials of commerce” include personal protective equipment used during a public health emergency.

Section 13 of the bill amends s. 252.385, F.S., to require the emergency shelter plan to project the hurricane shelter needs of the state for each of the next five years, including needs for shelters to accommodate physical distancing during a concurrent public health crisis. The emergency shelter plan must include information on the general shelter needs of the state, in addition to current requirements to report on special needs shelters and the availability of shelters that accept pets.

Emergency Planning Provisions in State Contracts

Present Situation

State agencies that contract with providers for the care of persons with disabilities or limitations that make the persons dependent upon the care of others must include emergency and disaster planning provisions in the contracts.²¹ The provisions must include:

- The designation of an emergency coordinating officer.
- A procedure to contact, prior to or immediately following an emergency or disaster, all persons, on a priority basis, who need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities and whose care is provided for under the contract.
- A procedure to help persons who would need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities register with the local emergency management agency.
- A procedure to dispatch the emergency coordinating officer or other staff members to special needs shelters to assist clients with special needs, if necessary.
- A procedure for providing the essential services the organization currently provides to special needs clients in preparation for, during, and following a disaster.²²

²⁰ Pursuant to 44 CFR 206.41 (1990) and s. 252.36(1)(a), F.S., the Governor serves as the head of the state emergency response team and is responsible for appointing the State Coordinating Officer to oversee emergency response activities. Generally, this is the director of the division. For example, *see* Office of the Governor, Executive Order No. 20-52 (Emergency Management - COVID-19 Public Health Emergency) (March 9, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf (last visited April 5, 2021).

²¹ Section 252.356, F.S.

²² *Id.*

Effect of Proposed Changes

Section 6 of the bill amends s. 252.356, F.S., to provide that state agencies contracting with providers that care for persons with disabilities must ensure those contracts provide for essential services during a public health emergency.

Emergency Powers of the Governor

Present Situation

The Governor is responsible for meeting the dangers presented to this state and its people by emergencies.²³ In the event of an emergency or threat of one, the Governor may declare a state of emergency by executive order or proclamation. The order or proclamation must be filed with the Department of State and in the commission offices of the affected counties.

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, but the order may not continue for longer than 60 days. The Governor may extend the order as necessary. However, the Legislature may end a state of emergency by passing a concurrent resolution.²⁴

Section 252.36(1), F.S., provides that the Governor “is responsible for meeting the dangers presented to this state and its people by emergencies.” Accordingly, in the event of an emergency that is beyond local control, the Governor is authorized to assume “direct operational control” over all or any part of the emergency management functions.²⁵ Moreover, he or she may issue executive orders, proclamations, and rules, all of which have the force and effect of law.

Through this emergency power, the Governor can suspend the provisions of any regulatory statute if compliance would prevent, hinder, or delay necessary action to deal with the emergency. Further, as designated by the Governor or in emergency management plans, state agencies, local governments, and others can make, amend, and rescind orders and rules as necessary for emergency management purposes. However, these orders and rules cannot conflict with orders of the Governor, the division, or other state agencies delegated emergency powers by the Governor. These orders or rules must be filed in the relevant agency or political subdivision office of the clerk or recorder, as applicable.²⁶ Currently, emergency orders by state agencies are published in the Florida Administrative Register, under the notice type of “miscellaneous.”

Financing

When a state of emergency is declared by the Governor, predetermined emergency management plans become effective. One piece of the emergency plans is to provide resources necessary to protect and mitigate the effects of a disaster, including the use or distribution of supplies, equipment, and materials.²⁷

²³ Section 252.36(1)(a), F.S.

²⁴ Section 252.36(2), F.S.

²⁵ *Id.*

²⁶ Sections 252.36(5)(a) and 252.46, F.S.

²⁷ Section 252.36(3), F.S.

Funding for the resources generally come from funds regularly appropriated to state and local agencies.²⁸ The policy of the state is that funds to meet emergencies must always be available.²⁹

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.³⁰

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.³¹

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 is not limited by these financing provisions.³² The state, affected local governments, and other eligible entities are allowed to receive grants from the federal government, as well as gifts, donations, or other forms of financial assistance from individuals or corporations.³³ For example, these entities may apply to the Federal Emergency Management Agency for grants for reimbursement or additional funds through the division.

Effect of Proposed Changes

Section 8 of the bill amends s. 252.36, F.S., increasing the transparency and legislative oversight of the executive branch's emergency powers. The bill requires emergency orders or proclamations to be filed with the President of the Senate and Speaker of the House of Representative.

The bill limits any emergency order, proclamation, or rule of the Governor to a duration of no more than 60 days. The order, proclamation, or rule can be renewed as necessary if emergency conditions persist, but each order must specify the provisions that are being renewed. This is consistent with current the 60-day limit for the duration of a declared state of emergency.

The bill also requires that all emergency declarations and orders issued by the Governor or any agency before, during, or after the declared emergency be filed with the Division of Administrative Hearings within 5 days after issuance. Failure to meet the deadline voids the declaration. The Division of Administrative Hearings is required to index the declarations and orders, make them available in a searchable format within 3 days of filing, and clearly identify the orders that are in effect at any given time. The division must have a conspicuous link to the Division of Administrative Hearing's website. This provision of the bill applies retroactively to all executive emergency declarations and orders in effect on July 1, 2021.

²⁸ Section 252.37(2), F.S.

²⁹ Section 252.37(1), F.S.

³⁰ *Id.*

³¹ Section 252.37(2), F.S. Provisions related to budget amendments are in ch. 216, F.S.

³² Section 252.37(3), F.S.

³³ Section 252.37(4), F.S.

Related to the Legislature's power to terminate a state of emergency by concurrent resolution, the bill clarifies that the power includes any specific order issued under the state of emergency.

The bill provides a presumption that K-12 public schools and businesses should remain open during an extended public health emergency, as long as public health and safety can be maintained by specific public health mitigation strategies recommended by federal or state health agencies. If the Governor orders schools or businesses to close or operate in a restricted manner he or she must state specific reasons for the action and reassess the situation regularly.

Currently, the Governor can transfer the direction, personnel, or functions of state agencies for the purpose of performing or facilitating emergency services. The bill requires the Governor to report monthly to the presiding officers of the Legislature whenever he or she exercises these powers. The monthly reports are required to be cumulative.

Section 9 of the bill creates s. 252.3611, F.S., to require each order, proclamation, or rule issued by the Governor, the division, or any agency to specify the statute or rule being amended or waived and the expiration date of the action.

The bill creates reporting requirements related to contracts executed for response to the emergency and related expenditures. For contracts executed during the first 90 days of an emergency the Governor or appropriate agency must submit contracts to the Legislature within 120 days of the declared emergency. When the duration of an emergency exceeds 90 days:

- The Governor or appropriate agency must submit all contracts expending emergency related funds to the Legislature within 72 hours of executing the contract; and
- The Governor or appropriate agency must submit monthly reports to the Legislature of all expenditures, revenues received, and funds transferred during the previous month to support the emergency response.

When the duration of an emergency exceeds one year the Auditor General must conduct a financial audit of all associated expenditures and a compliance audit of all contracts entered into during the emergency. The audit must be updated annually until the emergency has ended. Following the expiration or termination of a state emergency, the Auditor General must conduct a financial audit of all associated expenditures and a compliance audit of all contracts during the entire emergency.

Related to orders or rules that a political subdivision must file with the office of the clerk or recorder, as applicable, **section 15** of the bill amends s. 252.46, F.S., to provide that failure to file the order or rule within 3 days of its issuance voids the order or rule. The bill also requires the political subdivisions must make such orders available on a dedicated webpage, which the division must also include on its website. The political subdivision's website must clearly identify the orders that are in effect at any given time.

Section 19 of the bill provides that all executive orders issued by the Governor before May 1, 2021, expire on July 1, 2021. The executive orders may be reissued for 60-day periods if the emergency conditions persist. The reissuance of order must specify the provisions that are being reissued.

Financing

Section 11 of the bill amends s. 252.37, F.S., to require funding for the resources to respond to a disaster to first come from funds specifically appropriated to state and local agencies for disaster relief or response. If these funds are insufficient, the governor may make funds available by transferring and expending moneys appropriated to the Emergency Preparedness and Response Fund. Under the bill, the Governor is not authorized to transfer or expend funds appropriated for other purposes, out of any unappropriated surplus funds, or from the Budget Stabilization Fund. The Governor is authorized to request the Legislative Budget Commission to approve a request to appropriate additional funds to the Emergency Preparedness and Response Fund. **Section 1** of the bill amends s. 11.90, F.S., to authorize the Legislative Budget Commission to convene to transfer surplus funds to the Emergency Preparedness and Response Fund. These portions of the bill are effective upon the passage of SB 1982 or similar legislation being enacted to create the Emergency Preparedness and Response Fund.

The bill does not amend current law allowing the Governor to transfer funds with Legislative Budget Commission approval following the expiration or termination of the state of emergency. The transfers and expenditures must be directly related to the disaster or emergency. This portion of the bill is also effective upon the passage of SB 1982 or similar legislation being enacted to create the Emergency Preparedness and Response Fund.

The bill repeals authority for the Governor to administer or expend grants, gifts, or payments in aid of emergency prevention, mitigation, preparedness, response, or recovery. The Governor may apply for such funds, and then pursuant to law would have to submit budget amendments pursuant to s. 216.177, F.S., for authority to administer and expend the funds.

Under the bill, if a state agency, county, or municipality wishes to accept federal grants or private donations, it must submit a detailed spending plan for the money to the presiding officers of the Legislature and the chairs of the legislative appropriation committees. When this pre-submission of the agency's plan is not possible, a state agency or political subdivision must nonetheless submit the plan no later than 30 days after the initiation of any expenditures and for each additional 30 days of the emergency as funds continue to be disbursed.

Emergency Coordination Officers

Present Situation

The head of each of the following state agencies must select a point-person for emergency management issues – called an emergency management officer – and an alternate from within the agency:

- Each executive department.³⁴
- Each water management district.
- The Public Service Commission.
- The Fish and Wildlife Conservation Commission.

³⁴ Examples include the Department of Corrections, Department of Health, and Department of Management Services. *See* s. 20.03(2), F.S.

- The Department of Military Affairs.³⁵

Each emergency coordination officer must coordinate with the division on emergency preparedness issues, maintain a list of personnel to assist during disasters, and coordinate appropriate training for agency personnel.³⁶

Additionally, an agency's emergency coordination officer must ensure that each state agency and facility, such as a prison or office building, has a disaster preparedness plan. The plan must be coordinated with the applicable local emergency management agency and approved by the division. The plan is a comprehensive set of procedures that will ensure continuity of essential state functions under all circumstances. It must identify a baseline of preparedness for a full range of potential emergencies so that the agency can perform essential functions during any emergency or other situation that disrupts normal operations.³⁷

The plan is required to include minimum elements, such as identification of essential programs and personnel, procedures to notify personnel, delegations of authority, and identification of alternative facilities and related infrastructure.³⁸ The Division of Emergency Management is required to set guidelines for developing and implementing the plans.

Effect of Proposed Changes

Section 10 of the bill amends s. 252.365, F.S., specifying that the agency disaster preparedness plan's procedures for continuity of services must include the situation of action under a pandemic or other public health emergency. The bill requires the identified baseline of preparedness to consider and include preparedness for "rapid and large-scale increases in the public's need to access government services through technology or other means during an emergency."

The section further provides the plan must include elements regarding the availability of and distribution plans for personal protective equipment. Finally, the plan must be updated December 31 each year to include provisions related to pandemics and other public health emergencies consistent with the public health emergency management plan. Additionally, agencies must update their plans to be consistent with the public health emergency management plan.

Emergency Mitigation

Present Situation

Section 252.44, F.S., requires the Governor to consider steps that can be taken to mitigate the harmful consequences from emergencies. The Governor is authorized to direct state agencies with various responsibilities, such as water management, fire prevention, public works, and construction standards to study mitigation opportunities. The Governor may make

³⁵ Section 252.365(1), F.S.

³⁶ Section 252.365(2), F.S.

³⁷ Section 252.365(3), F.S.

³⁸ Section 252.365(3)(b), F.S.

recommendations to the Legislature, local governments, and other public and private entities on strategies to mitigate the harmful consequences of disasters.

Effect of Proposed Changes

Section 14 of the bill amends s. 252.44, F.S., to also authorize the Governor to direct state agencies charged with protecting and maintaining public health to study mitigation opportunities.

Medical Examiners

Present Situation

Florida medical examiners are local district officers appointed by the Governor to one of 25 medical examiner districts under ch. 406, F.S.³⁹ Medical examiners are governed by the Medical Examiners Commission, which is administratively housed within the Florida Department of Law Enforcement.

Current law requires district medical examiners to determine the cause of death in certain circumstances and to make any investigations, examinations, and autopsies necessary to make that determination. This includes determining the cause of death for a person who dies “by disease constituting a threat to public health.”⁴⁰

For much of 2020, Florida medical examiners determined the cause and certified the deaths of thousands of people who died of COVID-19, because COVID-19 is a disease constituting a threat to public health. However, in August 2020, the commission determined that district medical examiners were not obligated to certify COVID-19 death cases and authorized individual medical examiners to determine whether they would do so unless directly requested by the DOH.⁴¹ This decision was based on the overwhelming workload associated with the pandemic,⁴² difficulty obtaining timely and useful records from hospitals,⁴³ and insufficient emergency supports for a statewide long-term effort.⁴⁴ Some medical examiners chose not to certify deaths for COVID-19 cases after August, while others continued the practice.

Effect of Proposed Changes

Section 17 of the bill amends s. 381.00315, F.S., to require that upon a declaration of a public health emergency, the State Health Officer must establish, by order, the method and procedure for identifying and reporting cases of and deaths involving the infectious disease or occurrence identified as the basis for the declared public health emergency. The method and procedure must be consistent with the standards developed by the federal government, if any, or, if no federal standards exist, consistent with public health best practices. During the emergency, the DOH is responsible for the collection and official reporting and publication of cases and deaths. The bill

³⁹ Section 406.06, F.S.

⁴⁰ Section 406.11, F.S.

⁴¹ Medical Examiners Commission, MEC Meeting Minutes, Aug. 14, 2020, at 13, available at <https://www.fdle.state.fl.us/MEC/Meeting-Minutes/Documents/August-2020-MEC-Meeting-Minutes-Nelson-Approved.aspx> (last viewed March 31, 2021).

⁴² *Id.* at 9-11, 13.

⁴³ *Id.* at 9.

⁴⁴ *Id.* at 7-9.

also provides that the State Health Officer may, by emergency rule, ensure the necessary assistance of licensed health care providers and may request the district medical examiners to assist in performing this function.

Section 18 of the bill amends s. 406.11, F.S., to clarify that medical examiners are obligated to determine the cause of death and *certify the death* under certain circumstances and to require a medical examiner to assist the State Health Officer in identifying and reporting deaths when requested.

Emergency Measures of Cities, Counties, or other Political Subdivisions

Present Situation

The Florida Statutes do not expressly provide the Governor or Legislature with the authority to invalidate an ordinance or other measure of a political subdivision which unnecessarily restricts a constitutional right, fundamental liberty, or statutory right. However, current law does provide that any emergency order or rule of a political subdivision is invalid if it is inconsistent with any order or rule of an executive agency, provided the Governor or the Division of Emergency Management has delegated emergency authority to the agency.⁴⁵

Moreover, under case law interpreting the United States Constitution, governmental action—such as an emergency order or a rule—that infringes a “fundamental” constitutional right or liberty is subject to “strict scrutiny,” the most demanding level of judicial scrutiny.⁴⁶ If an order or rule fails to survive strict scrutiny, it is unconstitutional, and thus invalid.⁴⁷

Effect of Proposed Changes

Section 12 of the bill amends s. 252.38, F.S., to:

- Require the governmental entity imposing an ordinance or other measure that deprives a person of a right, a liberty, or property, to prove that the measure is “narrowly tailored” and serves a “compelling governmental interest” through the “least intrusive means”;
- Authorize the Governor or Legislature to invalidate a city or county measure that “unnecessarily restricts a constitutional right, fundamental liberty, or statutory right”; and
- Provide that a city or county emergency order will automatically expire 10 days after its issuance unless extended by a majority vote of the political subdivision's governing body.

Miscellaneous

Section 20 of the bill requires the Department of Business and Professional Regulation to review all executive orders issued during the COVID-19 pandemic and make written recommendations to the Legislature by September 30, 2021 regarding any issues that should be codified in law.

Section 16 amends s. 377.703, F.S., to conform to changes made by the bill.

The bill takes effect July 1, 2021, except as otherwise expressly provided.

⁴⁵ Section 252.46(1), F.S.

⁴⁶ See *Zablocki v. Redhail*, 434 US 374, 383 (1978).

⁴⁷ See generally, *Id.*

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 Art. VII, s. 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:

The bill could have a positive fiscal impact in the context of a public health emergency as the bill creates a presumption that businesses and schools should remain open.

C. Government Sector Impact:

It appears that many of the new duties or requirements created by the bill are similar to activities already in practice as the state responds to the current COVID-related emergency.

The Division of Emergency Management has not provided a fiscal impact statement for this bill. The bill changes the duties of the division, but does not impose significant costs. The division must coordinate with the Department of Health, the Agency for Health Care Administration, and other agencies in the development of additional provisions in the state comprehensive emergency management plan related to public health emergencies. The division is also required to maintain an inventory and report on state-owned personal protective equipment; the requirement to maintain a supply of equipment is subject to appropriation.

The bill requires the Department of Health to create a state public health emergency management plan to serve as the comprehensive guide to public health response in the state. The impact is not expected to be significant.

Division of Administrative Hearings currently records filed emergency orders and rules; the provisions of the bill are not expected to have a significant fiscal impact on the division.⁴⁸

The bill allows the Governor to expend funds to respond to a declared state of emergency from the Emergency Preparedness Response Fund and to request the Legislative Budget Commission to allow for increased appropriations into the fund.

VI. Technical Deficiencies:

The bill authorizes the Governor or the Legislature to invalidate an emergency measure, such as an ordinance, if it “unnecessarily” restricts a constitutional right, fundamental liberty, or statutory right. The Legislature may wish to explain more clearly what unnecessarily restricting a right or liberty means. Under the bill, one might wonder, for instance: If an ordinance would reduce COVID-19 infections by 10 percent but would deprive residents of their constitutional right to freely exercise their religion, would this *unnecessarily* restrict this right? What if the ordinance would reduce the spread of COVID-19 by 50 percent?

This provision of the bill also raises the question of how the Legislature or the Governor would make the determination that a local emergency measure unnecessarily restricts a right.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.90, 252.311, 252.34, 252.35, 252.355, 252.356, 252.359, 252.36, 252.365, 252.37, 252.38, 252.385, 252.44, 252.46, 377.703, 381.00315, and 406.11.

The bill creates section 252.3611 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/CS by Rules on April 6, 2021:

The committee substitute:

⁴⁸ Division of Administrative Hearings, *Senate Agency Bill Analysis Request – SB 2006*, Mar. 9, 2021, stating that the “bill would have neither policy implications nor fiscal impacts” on the division.

- Allows the use of personal protective equipment held by the division to be used to assist local governments and the private sector, *when determined to be necessary by the State Coordinating Officer*;
- Removes the 7-day notice requirement for the Governor to expend funds from the Emergency Preparedness and Response Fund;
- Removes the requirement for each county or municipality to submit to the Legislature a detailed spending plan for money or other items received through a grant, donation, or other means prior to expending the funds for emergency preparedness or response;
- Requires the division to submit quarterly reports to the Legislature of public assistance requests; and
- Addresses the problem of county or city ordinances or other measures that may violate people's rights by:
 - Requiring the governmental entity imposing a measure that deprives people of their rights, liberties, or property to prove that the measure is "narrowly tailored" and serves a "compelling governmental interest" through the "least intrusive means";
 - Authorizing the Governor or Legislature to invalidate a city or county measure that "unnecessarily restricts a constitutional right, fundamental liberty, or statutory right"; and
 - Providing that a city or county emergency order will automatically expire 10 days after its issuance unless extended by a majority vote of the political subdivision's governing body.

CS by Appropriations on April 1, 2021:

The committee substitute:

- Authorizes the Legislative Budget Commission to transfer unappropriated surplus funds to the Emergency Preparedness Response Trust Fund;
- Requires the Governor to use the Emergency Preparedness Response Fund when preparing for or responding to a state of emergency;
- Creates definitions for "personal protective equipment" and "public health emergency;"
- Requires the Governor to report on certain financial and contractual information for emergency orders that last more than 90 days and for the Auditor General to audit expenditures for emergency orders that last greater than 1 year and also after the emergency expires;
- Adds a requirement for the Department of Health to develop a public health emergency plan and makes related changes to incorporate the plan in the state comprehensive emergency management plan;
- Allows for delegation of authority by the division and for executive orders for declared states of emergency for 60-day periods, instead of 30-day periods as allowed in the bill;
- Specifies that when assessing the situation for schools and businesses to remain open during a public health emergency, any specific state or federal recommended public health mitigation strategies should be considered;
- Requires the division to have a link to the Division of Administrative Hearings website where emergency orders are indexed, as required by the bill;

- Requires state agencies to submit any emergency orders to Division of Administrative Hearings within 5 days of issuance;
- Requires local emergency orders to be posted online within 3 days of issuance;
- Provides that failure by the political subdivision to file an emergency order or rule with the office of the clerk or recorder voids that order or rule;
- Requires the division to include in the emergency shelter plan an estimate of the hurricane shelter needs of the state for the next 5 years;
- Provides that the division's inventory of PPE, including the replacement of expired items, is subject to appropriation;
- Removes provisions that limit suspension of regulatory statutes to 30-day periods and for reporting on the use of state agency personnel or functions for emergency purposes; and
- Requires the Department of Business and Professional Regulation to review all executive orders it issued during the declared emergency for COVID and make recommendations by September 30, 2021, to the Legislature regarding issues that should be codified into law.

B. Amendments:

None.