

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 7047 PCB PPE 21-01 Emergency Management

**SPONSOR(S):** Health & Human Services Committee and Pandemics & Public Emergencies Committee, Leek and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 2006

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**FINAL HOUSE FLOOR ACTION:** 78 Y's

36 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 7047 passed the House on April 28, 2021, as CS/CS/SB 2006, as amended. The Senate concurred in the House amendment as amended by the Senate on April 29, 2021. The House concurred in the Senate amendment and subsequently passed the bill on April 29, 2021.

The bill amends the State Emergency Management Act (Act) to better address the threat of pandemics or other public health emergencies. The bill provides that it is in the intent of the Legislature to minimize the negative effects of extended emergencies, and that all aspects of emergency preparedness, response, and recovery be transparent to the public to the greatest extent possible. As such, the bill clarifies that the Act applies to public health emergencies and requires related planning and preparation for such emergencies; requires greater transparency; and restricts certain local government emergency orders that restrict rights or liberties. Specifically, the bill:

- Requires the State Health Officer to develop a public health emergency plan to ensure the state is prepared for every foreseeable public health emergency;
- Requires the Division of Emergency Management (Division) to maintain an inventory of state-owned personal protective equipment;
- Increases transparency related to emergency orders, proclamations, and rules by requiring that they list the statute or rule that is being amended or waived and list the expiration date;
- Requires all emergency proclamations and rules be posted online in a searchable format;
- Provides for increased reporting and audits during a long-term emergency;
- Provides that the Governor must spend funds appropriated for disaster relief or response before accessing funds in the Emergency Preparedness and Response Fund, and may request additional appropriations to that fund by budget amendment approved by the Legislative Budget Commission;
- Requires the Division to maintain specified information relating to physical distancing in shelters;
- Provides that the State Health Officer is responsible for reporting the number of cases and deaths during public health emergencies and requires district medical examiners to assist upon request;
- Provides that a emergency orders issued by political subdivisions that limit the rights or liberties of individuals or businesses, except for orders issued in response to hurricanes or weather-related emergencies, must be narrowly tailored to reduce any infringement on individual rights or liberties to the greatest extent possible and may not exceed a total duration of 42 days;
- Requires certain local government orders and rules to be published online within a specified time;
- Authorizes the Governor to invalidate certain orders issued by political subdivisions;
- Authorizes the Governor, Lieutenant Governor, Division Director, the Surgeon General, the President of the Senate, and the Speaker of the House of Representatives to conduct public service announcements during a declared state of emergency; and
- Prohibits governments, businesses, and education institutions from requiring documentation of COVID-19 vaccination or post-infection recovery, and exempts health care providers from the prohibition.

The bill has a significant negative fiscal impact on state government and no fiscal impact on local governments.

The bill was approved by the Governor on May 3, 2021, ch. 2021-8, L.O.F., and will become effective on July 1, 2021.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Background

#### State Emergency Management Act

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 State Emergency Management Act<sup>8</sup> (Act) 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>

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.

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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. Executive Order 20-52 designated the Director of the Division as the SCO and the State Health Officer and Surgeon General as a Deputy SCO.

- 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 supply 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>

## Governor

Emergency powers are only exercised when, and if, a state of emergency or disaster or impeding emergency or disaster has been declared or a direct attack on the State of Florida occurs. During a declared state of emergency, the Governor must take such action, give such direction, and employ such measures as may be reasonable and necessary to secure compliance with the State Emergency Management Act, the Florida Emergency Planning and Community Right-to-Know Act, and all orders and rules made pursuant thereto, to state and local law enforcement officers and agencies<sup>15</sup> and the Department of Health and the Agency for Health Care Administration.<sup>16</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>17</sup>

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>18</sup>

### *Declaring a State of Emergency, Generally*

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>19</sup> A declared state of emergency is limited to 60 days, unless renewed by the Governor or terminated by the Legislature.<sup>20</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>21</sup> Executive orders must be promptly disseminated to bring its contents to the attention of

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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 using all available resources to state government and each county and municipality, as reasonably necessary to cope with the emergency; subject to any applicable requirements for compensation under s. 252.43, F.S., 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(6), F.S.

<sup>16</sup> Section 252.36(7), F.S.

<sup>17</sup> Section 252.36(8), F.S.

<sup>18</sup> Section 252.36(4), F.S.

<sup>19</sup> Section 252.36(2), F.S.

<sup>20</sup> Section 252.36(2), F.S.

<sup>21</sup> Section 252.36(2), F.S.

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 that the order applies.<sup>22</sup>

Declaring a state of emergency initiates certain emergency activations and authorities, such as:

- Activating 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; and
- Serving as the authority for the deployment and use of any forces to which the plans apply and for the use or distribution of supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to the State Emergency Management Act and the Florida Emergency Planning and Community Right-to-Know Act.<sup>23</sup>

Dependent on the degree of the disaster or emergency, additional emergency activations or authorities may be deployed.

### *Emergency Spending Authority*

The policy of the state is that funds to meet emergencies must always be available.<sup>24</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>25</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 of funds for the Governor to use during an emergency.

Following the expiration or termination of a state of emergency, the Governor may, subject to approval by the Legislative Budget Commission, transfer moneys with a budget amendment to satisfy the budget authority granted for such emergency.<sup>26</sup>

The Act authorizes the state to receive grants from the federal government, as well as gifts, donations, or other forms of financial assistance from individuals or corporations.<sup>27</sup>

### Division of Emergency Management

The Division 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 Division must administer programs to apply rapidly all available aid to communities stricken by an emergency.<sup>28</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 government and private agencies.<sup>29</sup>

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<sup>22</sup> Section 252.36(2), F.S.

<sup>23</sup> Section 252.36(3), F.S.

<sup>24</sup> Section 252.37(1), F.S.

<sup>25</sup> Section 252.37(2), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> Section 252.37(4), F.S.

<sup>28</sup> Section 14.2016(1), F.S.

<sup>29</sup> *Id.* and s. 252.35(1), F.S.

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>30</sup>

### *State Comprehensive Emergency Management Plan*

The state comprehensive emergency management plan<sup>31</sup> must be integrated into and coordinated with the plans and programs of the Federal Government.<sup>32</sup> The plan must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor by February 1 of every even-numbered year.<sup>33</sup> Additionally, the plan must be adopted as a rule pursuant to ch. 120, F.S.<sup>34</sup>

As for its contents, 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 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.<sup>35</sup>

Additionally, the plan must include:

- An evacuation component that includes regional and interregional coordination of evacuation activities.
- A shelter component that includes regional and interregional planning provisions and promotes coordination of sheltering between the public, private, and nonprofit sectors.
- A post-disaster relief component.<sup>36</sup>

### Emergency Coordination Officers

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;
- Each water management district;

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<sup>30</sup> See s. 252.35, F.S.

<sup>31</sup> Section 252.35(2)(a), F.S.

<sup>32</sup> Section 252.35(2), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

- The Public Service Commission;
- The Fish and Wildlife Conservation Commission; and
- The Department of Military Affairs.<sup>37</sup>

Each emergency coordination officer must:

- Coordinate with the Division on emergency preparedness issues;
- Prepare and maintain emergency preparedness and postdisaster response and recovery plans for the agency;
- Maintain rosters of personnel to assist in disaster operations; and
- Coordinate appropriate training for agency personnel.<sup>38</sup>

Additionally, each emergency coordination officer must ensure that each state agency and facility, such as a prison or office building, has a disaster preparedness plan.<sup>39</sup> The plan must be coordinated with the applicable local emergency management agency and approved by the Division.<sup>40</sup>

The disaster preparedness plan must:

- Outline a comprehensive and effective program to ensure continuity of essential state functions under all circumstances.
- Identify a baseline of preparedness for a full range of potential emergencies to establish a viable capability to perform essential functions during any emergency or other situation that disrupts normal operations.
- Include, at a minimum, the following elements:
  - Identification of essential functions, programs, and personnel;
  - Procedures to implement the plan and personnel notification and accountability;
  - Delegations of authority and lines of succession;
  - Identification of alternative facilities and related infrastructure, including those for communications;
  - Identification and protection of vital records and databases; and
  - Schedules and procedures for periodic tests, training, and exercises.<sup>41</sup>

### Counties and Municipalities

Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each county and municipality of the state. Counties and municipalities have certain duties and responsibilities in order to provide effective and orderly governmental control and coordination of emergency operations, including a requirement that counties adopt an emergency management plan that is coordinated and consistent with the state comprehensive emergency management plan and program.<sup>42</sup>

Counties must establish a local emergency management agency that serves the entire county. The director of the local emergency management agency must coordinate emergency management activities, services, and programs within the county and must serve as liaison to the Division and other local emergency management agencies. Each local emergency management agency must perform emergency management functions within the county in accordance with state and county emergency management plans and pursuant to ch. 252, F.S.

Counties and municipalities have the authority to declare a state of *local* emergency if an emergency affects only one political subdivision, which triggers the ability to request state assistance or invoke emergency-related mutual-aid assistance.<sup>43</sup> A state of local emergency may only be declared by a

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<sup>37</sup> Section 252.365(1), F.S.

<sup>38</sup> Section 252.365(2), F.S.

<sup>39</sup> Section 252.365(3), F.S.

<sup>40</sup> *Id.*

<sup>41</sup> Section 252.365(3)(a) and (b), F.S.

<sup>42</sup> Section 252.38(1)(a), F.S.

<sup>43</sup> Section 252.38(3)(a)5., F.S.

mayor, city manager, or board of county commissioners.<sup>44</sup> The duration of a local state of emergency is seven days, but may be extended in seven-day increments as necessary.

Counties and municipalities are authorized and empowered to make, amend, and rescind orders and rules as are necessary for emergency management purposes that are not inconsistent with any orders or rules adopted by the Division or by any state agency exercising a power delegated to it by the Governor or the Division.<sup>45</sup> All orders and rules adopted by any county or municipality have the full force and effect of law when filed in the office of the clerk or recorder of the political subdivision; however, any order or rule inconsistent with the State Emergency Management Act or the Florida Emergency Planning and Community Right-to-Know Act will be suspended to the extent that such conflict exists. Furthermore, any person violating any rule or order issued pursuant to either act is guilty of a second-degree misdemeanor and may be punished by a term of up to 60 days in jail and fines up to \$500.<sup>46</sup>

### Public Health Emergencies

The State Health Officer<sup>47</sup> is exclusively responsible for declaring public health emergencies,<sup>48</sup> which include 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. 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.<sup>49</sup> A public health emergency may not continue longer than 60 days unless the Governor concurs in the renewal of the declaration.

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.

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.

### *Planning for Public Health Emergencies*

Current law requires the Division to develop a comprehensive emergency management plan, provides guidance on content, and requires the Division to adopt the plan as a rule under ch. 120 and submit the plan to the Governor and legislative officers annually.<sup>50</sup> Current law does not expressly require the Division or DOH to develop a plan for public health emergencies, or integrate it with the comprehensive emergency management plan. However, DOH developed the Public Health and Medical Emergency Operations Plan, last updated in 2014.<sup>51</sup>

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<sup>44</sup> 2020 State Comprehensive Emergency Management Plan, Basic Plan, p. 15.

<sup>45</sup> Section 252.46, F.S.

<sup>46</sup> See s. 252.50, F.S.

<sup>47</sup> The head of the Department of Health is the Surgeon General and the State Health Officer. Section 20.43, F.S.

<sup>48</sup> Section 381.00315, F.S.

<sup>49</sup> The Chief of Domestic Security is the executive director of the Department of Law Enforcement, or his designee. Section 943.0311, F.S.

<sup>50</sup> Section 252.35(2), F.S. The Florida Comprehensive Emergency Management Plan is available online at <https://www.floridadisaster.org/dem/preparedness/natural-hazards/comprehensive-emergency-management-plan/>.

<sup>51</sup> DOH, Bureau of Preparedness & Response, Public Health and Medical Emergency Operations Plan, Oct. 2014, available at DOH PHM EOP 100214 with edits (floridahealth.gov)(last viewed March 20, 2021).

Similarly, current law requires the Division to ascertain the resource needs of the state and political subdivisions in the event of an emergency declared under ch. 252, F.S., and plan for how to ensure their availability.<sup>52</sup> However, current law does not direct DOH to make a similar assessment of resource and public health infrastructure needs for public health emergencies declared under ch. 381, F.S.

### *Public Health Emergency Death Determinations*

#### Death Certificates

Florida medical examiners are local district officers appointed by the Governor<sup>53</sup> to one of 25 medical examiner districts<sup>54</sup> under ch. 406, F.S. Medical examiners are governed by the Medical Examiners Commission (Commission), which is administratively housed within the Florida Department of Law Enforcement.<sup>55</sup> The Commission has authority to investigate and suspend medical examiners for violations of ch. 406, F.S.<sup>56</sup>

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, for the following deaths and circumstances:<sup>57</sup>

- Of criminal violence.
- By accident.
- By suicide.
- Suddenly, when in apparent good health.
- Unattended by a practicing physician or other recognized practitioner.
- In any prison or penal institution.
- In police custody.
- In any suspicious or unusual circumstance.
- By criminal abortion.
- By poison.
- By disease, injury, or toxic agent resulting from employment.
- When a dead body is brought into the state without proper medical certification.
- When a body is to be cremated, dissected, or buried at sea.

In addition, medical examiners must determine the cause of death for a “death by disease constituting a threat to public health.”<sup>58</sup>

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.<sup>59</sup> However, in August, the Commission determined that district medical examiners were not obligated to certify COVID-19 death cases, and authorized individual medical examiners to

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<sup>52</sup> Section 252.35(2)(g) and (p), F.S.

<sup>53</sup> Section 406.02, F.S.

<sup>54</sup> The Commission establishes the districts by rule. See, ch. 11G-5.002, F.A.C. Medical examiner district boundaries usually align with the 20 court circuits, with some variations. Fla. Dept. Law Enforcement, Medical Examiners Commission, Coverage Map: Medical Examiner Districts, available at <https://www.fdle.state.fl.us/MEC/Maps/Documents/Coverage-Map.aspx> (last viewed March 20, 2021).

<sup>55</sup> Section 406.02, F.S. Commission members include two active medical examiners, a funeral director, a state attorney, a public defender, a sheriff, a county commissioner, the Attorney General (or designee) and the State Surgeon General (or designee).

<sup>56</sup> Sections 406.06 and 406.075, F.S.

<sup>57</sup> Section 406.11, F.S.

<sup>58</sup> *Id.*

<sup>59</sup> The method of death certification for COVID-19 cases was established by the federal Centers for Disease Control and Prevention: the practitioner must document both immediate and underlying causes in a clinically rational progression, and document any contributing conditions, such as co-morbidities. See, e.g., Department of Health and Human Services Centers for Disease Control and Prevention, Vital Statistics Reporting Guidance Report: “Guidance for Certifying Deaths Due to Coronavirus Disease 2019 (COVID-19)”, No. 3 (April 2020), available at NCHS NVSS Guidance for certifying COVID-19 deaths vsrg03-508.pdf (last viewed March 20, 2021). This method is consistent with practice standards for death certification prior to COVID-19, established by the Florida Department of Health. See, DOH, Bureau of Vital Statistics, “Certifier Instructions for Completing the Cause-of-Death Section of the Florida Death Certificate”, available at COD Fact sheet for certifiers 9.2019.pdf (last viewed March 20, 2021); DOH, Bureau of Vital Statistics, “What the Practitioner Should Know about Certifying Cause of Death on the Florida Death Certificate”, available at Practitioners and the COD brochure v. 3.pdf (last viewed March 20, 2021).



determine whether they would do so unless directly requested by DOH.<sup>60</sup> This decision was based on the overwhelming workload associated with the pandemic,<sup>61</sup> difficulty obtaining timely and useful records from hospitals,<sup>62</sup> and insufficient emergency supports for a statewide long-term effort.<sup>63</sup> Some medical examiners chose not to certify deaths for COVID-19 cases after August, others continued the practice.

Some medical examiners seemed uncertain whether the declared state of emergency made them the exclusive certifiers of COVID-19 deaths (as opposed to treating practitioners), and expressed the opinion that death certifications would be better performed by the treating practitioners.<sup>64</sup>

## Death Counts

In the event of a public health emergency on the scale of a pandemic, the federal government may issue guidance for how to officially determine the number of deaths. For example, during the COVID-19 pandemic, the federal Center for Disease Control and Prevention issued guidance for states on how to handle COVID-case deaths when submitting state-level mortality data through the National Vital Statistics System. To maintain consistent reporting, DOH reported deaths to the federal government, relying on clinician reporting to the Bureau of Epidemiology and on the death certificates completed by medical examiners (and, later, by treating practitioners). However, medical examiners debated responsibility for death counts. Commission practice is for the Commission to be the official source of a death count in an emergency, such as a hurricane, and some commissioners expressed the view that ultimate responsibility for death counts was a matter for the Commission to determine and did not involve DOH.<sup>65</sup>

Current law does not expressly address ultimate responsibility for death counts in a public health emergency.

## Immunization

### *Emergency Use Authorizations*

Emergency use authorization (EUA) allows the United States Food and Drug Administration (FDA) to facilitate the availability and use of medical countermeasures during public health emergencies.<sup>66</sup> Under section 564 of the Federal Food, Drug, and Cosmetic Act,<sup>67</sup> when the Secretary of the United States Department of Health and Human Services (HHS) declares that an EUA is appropriate, the FDA may authorize unapproved medical products or unapproved uses of approved medical products for use in an emergency to diagnose, treat, or prevent serious life-threatening diseases or conditions caused by chemical, biological, radiological, and nuclear threats.<sup>68</sup>

The FDA issued EUAs for three COVID-19 vaccines.<sup>69</sup>

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<sup>60</sup> Medical Examiners Commission, MEC Meeting Minutes, Aug. 14, 2020, at 13, available at MEDICAL EXAMINERS COMMISSION MEETING MINUTES (state.fl.us) (last viewed March 21, 2021).

<sup>61</sup> *Id.* at 9-11, 13. Medical examiners cited backlogs ranging from 100 in Broward to 650 in Miami-Dade County, in August 2020.

<sup>62</sup> *Id.* at 9.

<sup>63</sup> *Id.* at 7-9.

<sup>64</sup> *Id.* at 7-9. This view, and the overwhelming workload, may be supported by the fact that 55 percent of death certificates issued by medical examiners from March 5, 2020, to September 16, 2020, were flawed. Many of these did not include a clinical progression of events, subverting epidemiological analysis. Many included no clinical events at all (other than a positive COVID-19 test), failing to properly certify the death and calling into question any death count based on those certifications. Fla. House of Representatives, "Analysis of COVID Death Data", Oct. 12, 2020, on file with committee staff.

<sup>65</sup> *Id.* at 12.

<sup>66</sup> Food and Drug Administration, *Emergency Use Authorization*, <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization> (last visited March 16, 2021). Medical countermeasures are FDA-regulated products (biologics, drugs, and devices) that may be used in the event of a public health emergency.

<sup>67</sup> 21 U.S.C. § 360bbb-3.

<sup>68</sup> *Supra*, note 66. A determination that a public health emergency exists is insufficient to enable the FDA to issue EUAs.

<sup>69</sup> *Id.*

## Centers for Disease Control Immunization Recommendations

The federal Centers for Disease Control and Prevention (CDC) makes immunization recommendations for both adults and children. The Advisory Committee on Immunization Practices (ACIP) is comprised of medical and public health experts who develop recommendations on the use of vaccines in the United States.<sup>70</sup> The ACIP works with professional organizations, such as the American Academy of Pediatrics, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, and the American College of Physicians to develop annual childhood and adult immunization schedules.<sup>71</sup> The CDC reviews the ACIP's recommendations; if approved, they are published as the CDC's official recommendations for immunizations of the U.S. population.<sup>72</sup>

The current recommended immunization schedule for those ages 18 and under includes:<sup>73</sup>

- Hepatitis A and B
- Diphtheria, tetanus, & acellular pertussis
- Pneumococcal conjugate
- Influenza
- Varicella
- Meningococcal A and B
- Tetanus, diphtheria, and acellular pertussis
- Rotavirus
- Haemophilus influenza type b
- Inactivated poliovirus
- Measles, mumps, rubella (MMR)
- Human papillomavirus
- Pneumococcal polysaccharide

The current recommended immunization schedule for adults includes:<sup>74</sup>

- Influenza (annually)
- Measles, mumps, rubella
- Zoster
- Pneumococcal polysaccharide
- Haemophilus influenza type b
- Hepatitis B
- Meningococcal B
- Varicella (if born in 1980 or later)
- Tetanus, diphtheria, pertussis (decennial booster)
- Human papillomavirus
- Pneumococcal conjugate
- Hepatitis A
- Meningococcal A, C, W, Y

New vaccines are considered for addition to the schedule after licensure by the FDA.<sup>75</sup> Not all newly licensed vaccines are added to the schedule. Some licensed vaccines are only recommended for people who are traveling to areas where other vaccine preventable diseases occur,<sup>76</sup> such as yellow fever, cholera, dengue, Japanese encephalitis, plague, rabies, smallpox, and typhoid.<sup>77</sup>

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<sup>70</sup> Centers for Disease Control and Prevention, Advisory Committee on Immunization Practices (ACIP), *General Committee-Related Information*, available at <https://www.cdc.gov/vaccines/acip/committee/index.html> (last visited March 16, 2021).

<sup>71</sup> Centers for Disease Control and Prevention, Advisory Committee on Immunization Practices (ACIP), *ACIP Recommendations*, available at <https://www.cdc.gov/vaccines/acip/recommendations.html> (last visited March 16, 2021).

<sup>72</sup> *Id.*

<sup>73</sup> Centers for Disease Control and Prevention, *Recommended Child and Adolescent Immunization Schedule for Ages 18 Years and Younger, United States, 2021*, available at <https://www.cdc.gov/vaccines/schedules/hcp/imz/child-adolescent.html> (last visited March 16, 2021). The schedule provides the recommended age, as well as the administration intervals for vaccines that require multiple doses. Some vaccines are recommended only for populations with special situations that put these individuals at higher risk.

<sup>74</sup> Centers for Disease Control and Prevention, *Recommended Adult Immunization Schedule for Ages 19 Years or Older, United States, 2021*, available at <https://www.cdc.gov/vaccines/schedules/hcp/imz/adult.html> (last visited March 16, 2021). The schedule provides the recommended age, as well as the administration intervals for vaccines that require multiple doses. Some vaccines are recommended only for populations with special situations that put these individuals at higher risk.

<sup>75</sup> College of Physicians of Philadelphia, *The History of Vaccines: The Development of the Immunization Schedule*, available at <http://www.historyofvaccines.org/content/articles/development-immunization-schedule> (last visited March 16, 2021).

<sup>76</sup> Such travelers carry an International Certificate of Vaccination or Prophylaxis, used by practitioners to document vaccination for purposes of obtaining entry to foreign countries. World Health Organization, *International Health Regulations (2005)*, available at [https://www.who.int/ihr/ports\\_airports/icvp/en/](https://www.who.int/ihr/ports_airports/icvp/en/) (last viewed April 19, 2021).

<sup>77</sup> *Id.* For a complete list of FDA-licensed vaccines, see U.S. Food & Drug Administration, *Vaccines Licensed for Use in the United States*, (last rev. Jan. 16, 2020), available at <https://www.fda.gov/vaccines-blood-biologics/vaccines/vaccines-licensed-use-united-states> (last visited March 15, 2021).

The ACIP issued recommendations on vaccines for COVID-19,<sup>78</sup> and the CDC added COVID-19 vaccines to the recommended immunization schedule for adults.<sup>79</sup>

### *Immunization Documentation*

Current law requires DOH to administer a program to prevent and control vaccine-preventable diseases for all children in this state.<sup>80</sup> For school admission or attendance, a child must obtain the following vaccinations:<sup>81</sup>

- Diphtheria, tetanus, and pertussis
- Polio
- Measles, mumps, rubella (MMR)
- Haemophilus influenza type b (Hib)
- Hepatitis B; and
- Varicella (Chickenpox)

DOH also requires meningococcal meningitis and hepatitis B vaccines for individuals residing in on-campus housing of a postsecondary educational institution, and recommends them for every student.<sup>82</sup>

Current law requires DOH to maintain an electronic registry of immunizations. The Florida State Health Online Tracking System (SHOTS) is the statewide, online immunization registry employed by DOH to track immunization records.<sup>83</sup> Only authorized health care practitioners, schools, childcare providers, and parents may access the system.<sup>84</sup> A health care practitioner voluntarily enrolls to access SHOTS, and once enrolled, may upload patient immunization history into the system.<sup>85</sup> A health care practitioner who provides an immunization that is required for school admission or attendance submits that information to SHOTS or documents the immunization on a Florida Certification of Immunization Form.<sup>86</sup> DOH must maintain the confidentiality of the information stored in SHOTS, and any health care practitioner or other agency that obtains such information must maintain the confidentiality.<sup>87</sup> DOH uses SHOTS to record data on COVID-19 vaccinations provided by practitioners.<sup>88</sup>

Current law authorizes the State Health Officer to order immunization of an individual for communicable diseases with significant morbidity or mortality and that present a severe danger to public health;<sup>89</sup> it is unknown whether this authority has ever been used. Other than the requirement for college students residing in campus housing to be immunized against meningitis and hepatitis B, current law does not require any vaccine for an adult.

### *Vaccine Passports*

To address the COVID-19 pandemic, some states and countries imposed vaccine documentation requirements to allow greater internal freedom of movement and access to places where many people may gather. For example, Israel's "green pass" exempts the vaccinated bearer from quarantine after contact with an infected person or after travel. It also allows access to sports and cultural events,

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<sup>78</sup> Advisory Committee on Immunization Practices, *COVID-19 ACIP Vaccine Recommendations*, Morbidity and Mortality Weekly Report, Dec. 13, 2020;69; Dec. 20, 2020;69; March 2, 2021;70, available at <https://www.cdc.gov/vaccines/hcp/acip-recs/vacc-specific/covid-19.html> (last visited April 17, 2021).

<sup>79</sup> *Supra*, note 74.

<sup>80</sup> Section 381.003(1)(e), F.S.

<sup>81</sup> Department of Health, *Immunization Guidelines: Florida Schools, Childcare Facilities, and Family Daycare Homes*, (March 2013), incorporated by reference in Rule 64D-3.046, F.A.C., available at <http://www.floridahealth.gov/programs-and-services/immunization/children-and-adolescents/documents/school-guide.pdf> (last visited April 16, 2021). The schedule and the number of doses required varies by age.

<sup>82</sup> Section 1006.69, F.S. A student or the parent of a minor who is required to have such vaccines, may refuse by signing a waiver for each vaccine.

<sup>83</sup> Department of Health, *Frequently Asked Questions*, available at <http://www.floridahealth.gov/programs-and-services/immunization/immunization-faq.html> (last visited April 16, 2021).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Rule 64D-3.046, F.A.C.

<sup>87</sup> *Id.*

<sup>88</sup> Emergency Rule 64DER21-4 COVID-19: Vaccine Reporting Requirements.

<sup>89</sup> Section 381.00135, F.S.

hotels, gyms, and restaurants.<sup>90</sup> New York created the “Excelsior Pass”, an electronic application which documents COVID-19 vaccination.<sup>91</sup> The pass was announced as a voluntary program to share vaccination and COVID-testing status to gain access to public and private events. Businesses in New York, including Madison Square Garden, are using it.<sup>92</sup>

Historically, many countries have required evidence of vaccination for international travel. Such documentation may be used as a condition of entering the country, or to allow the traveler to avoid requirements to be quarantined or be tested. For example, yellow fever vaccinations for international travel were first imposed in 1933.<sup>93</sup> Several countries, including Georgia, Estonia, Poland and Seychelles, require incoming travelers to prove COVID-19 vaccination to avoid testing, quarantine, and travel restrictions.<sup>94</sup>

Travel-related businesses are exploring the use of vaccine passports. The International Air Transport Association, a trade group representing airlines, is developing an application for use by airlines and their passengers to document COVID-19 immunization status of both employees and travelers. According to the Association, 27 airlines are testing the application for use, including Quantas and Virgin Atlantic.<sup>95</sup> Similarly, several cruise lines have announced mandatory vaccination policies for employees and travelers, including Royal Caribbean, Virgin, Norwegian, Celebrity, Cunard and Viking.<sup>96</sup>

Other types of businesses are less likely to use vaccine passports. A recent survey of 1,800 employers indicated that less than one percent currently require employees to be vaccinated; six percent plan to require employee vaccination in the future, either when vaccines are more readily available or when the FDA issues formal approval of the vaccines. Of the employers surveyed, 47 percent would prefer a government entity to make the decision for them – to either mandate employee vaccination or prohibit vaccine documentation for employment.<sup>97</sup> The federal Equal Employment Opportunity Commission recently released guidance advising employers that they may legally require workers to be vaccinated for COVID-19, if they make appropriate accommodation for employees with religious objections or with medical conditions that make immunization contraindicated.<sup>98</sup>

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<sup>90</sup> Rachel Wilf-Miron, MD, Vicki Myers, PhD, Mor Saban, PhD, “Incentivizing Vaccination Uptake: The “Green Pass” Proposal in Israel”, JAMA, March 15, 2021, available at <https://jamanetwork.com/journals/jama/fullarticle/2777686> (last visited April 18, 2021).

<sup>91</sup> “Excelsior Pass”, New York State, available at <https://covid19vaccine.health.ny.gov/excelsior-pass> (last visited April 18, 2021).

<sup>92</sup> “Governor Cuomo Announces Launch of Excelsior Pass to Help Fast-Track Reopening of Businesses and Entertainment Venues Statewide”, March 26, 2-21, available at <https://www.governor.ny.gov/news/governor-cuomo-announces-launch-excelsior-pass-help-fast-track-reopening-businesses-and> (last viewed April 18, 2021).

<sup>93</sup> See, Fenner, F.; Henderson, D.A.; Arita, I.; Jezek, Z.; Ladnyi, I.D. (1988). “Chapter 7: Developments in vaccination and control between 1900 and 1966”, *Smallpox and its Eradication*, World Health Organization (1988); Whiteman, Marjorie Millace, *Digest of International Law*, Vol. 9., U.S. Department of State (1968).

<sup>94</sup> Rouw, Anna, et al, “Key Questions about COVID-19 Vaccine Passports and the U.S.”, Kaiser Family Foundation, April 15, 2021, available at <https://www.kff.org/coronavirus-covid-19/issue-brief/key-questions-about-covid-19-vaccine-passports-and-the-u-s/> (last viewed April 17, 2021).

<sup>95</sup> International Air Transport Association, “IATA Travel Pass Initiative”, available at <https://www.iata.org/en/programs/passenger/travel-pass/> (last viewed April 19, 2021).

<sup>96</sup> See, e.g., Royal Caribbean, “Royal Caribbean Marks 2021 Return to Caribbean with Cruises From the Bahamas”, March 29, 2021, available at <https://www.royalcaribbeanpresscenter.com/press-release/1507/royal-caribbean-marks-2021-return-to-caribbean-with-cruises-from-the-bahamas/> (last viewed April 19, 2021); *Business Insider*, “A Royal Caribbean-owned cruise line just announced a vaccine requirement. These are all the cruise lines that will require COVID-19 vaccinations for guests and crew”, April 13, 2021, available at <https://www.businessinsider.com/cruise-ship-covid-vaccine-requirements-guests-crew-each-company-2021-2> (last viewed April 17, 2021).

<sup>97</sup> *Littler COVID-19 Vaccine Employer Survey Report*, Littler, Feb. 2021, available at <https://aboutblaw.com/VwA> (last viewed April 19, 2021).

<sup>98</sup> “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws”, U.S. Equal Employment Opportunity Commission, Dec. 16, 2020, available at <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws/> (last viewed April 19, 2021).

Some colleges and universities plan to require vaccine passports for students. The University of Notre Dame, Cornell University and Rutgers will require vaccination to attend in the fall; similarly, the University of California San Diego will require students to be tested for COVID-19 biweekly if not vaccinated.<sup>99</sup>

Some states have prohibited such requirements. By executive order citing his emergency powers under Chapter 252, F.S., Governor DeSantis prohibited vaccine passports in Florida. The governor of Texas also issued such an order.<sup>100</sup>

Other than the school vaccination requirements described above, current Florida law does not require documentation of vaccination to enter any public building or obtain access to any government service; nor does it prohibit the use of vaccine passports by government agencies or private businesses.

### Public Employee Gifts

The Code of Ethics for Public Officers and Employees is intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.<sup>101</sup> The Code establishes standards of conduct of elected and appointed officers and appointed officials and government employees. Among these standards are the regulation of the solicitation and acceptance of gifts. The term “gift” encompasses nearly anything of value. Under the law, a reporting individual is prohibited from soliciting any gift and from knowingly accepting a gift if the gift is valued over \$100. Similar provisions apply to the person giving the gift – the vendor is prohibited from giving, either directly or indirectly, a gift that has value in excess of \$100.

### Emergency Preparedness and Response Trust Fund

Senate Bill 1892 (2021) creates the Emergency Preparedness and Response Trust Fund (EPR Fund) within the Executive Office of the Governor. The bill provides that the EPR Fund is the primary funding source for the Governor for purposes of preparing or responding to an emergency that exceeds regularly appropriated funding sources during a declared state of emergency. Subject to the Governor’s veto powers, the effective date of Senate Bill 1892 (2021) is July 1, 2021.

### **Effect of the Bill**

The bill provides that it is in the intent of the Legislature to minimize the negative effects of extended emergencies. It is also the intent that all aspects of emergency preparedness, response, and recovery be transparent to the public to the greatest extent possible. As such, the bill clarifies that the Emergency Management Act applies to public health emergencies and requires related planning and preparation for such emergencies; provides for greater transparency related to emergency orders,

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<sup>99</sup> See, “Notre Dame to require students to be vaccinated for COVID-19 beginning with fall 2021 semester”, *Notre Dame News*, April 7, 2021, available at <https://news.nd.edu/news/notre-dame-to-require-students-to-be-vaccinated-for-covid-19-beginning-with-fall-2021-semester/> (last visited April 18, 2021); “Cornell releases plans for fall return to campus”, *Cornell Chronicle*, April 2, 2021, available at <https://news.cornell.edu/stories/2021/04/cornell-releases-plans-fall-return-campus> (last visited April 19, 2021); “Our Path Forward – COVID-19 Vaccination and the Fall Term”, Office of the President, Rutgers, March 25, 2021, available at <https://www.rutgers.edu/president/our-path-forward> (last visited April 19, 2021); “UC San Diego Plans to Significantly Increase Campus Density in Fall 2021”, UC San Diego News Center, April 7, 2021, available at <https://ucsdnews.ucsd.edu/pressrelease/uc-san-diego-plans-to-significantly-increase-campus-density-in-fall-2021> (last visited April 19, 2021).

<sup>100</sup> Governor Ron DeSantis, Executive Order No. 21-81, April 2, 2021, available at <https://www.flgov.com/wp-content/uploads/2021/04/EO-21-81.pdf> (last viewed April 18, 2021); Governor Greg Abbott, Executive Order No. GA-35 relating to COVID-19 vaccines and the protection of Texans’ private health information, available at [https://gov.texas.gov/uploads/files/press/EO-GA-35\\_private\\_health\\_information\\_protection\\_vaccines.pdf](https://gov.texas.gov/uploads/files/press/EO-GA-35_private_health_information_protection_vaccines.pdf) (last visited April 18, 2021).

<sup>101</sup> Chapter 112, F.S.

delegated emergency powers, and emergency spending; and restricts certain local government emergency orders that restrict the rights or liberties of individuals or businesses.

### Public Health Emergencies

The bill inserts the term public health emergency throughout the Emergency Management Act, clarifying that the Act applies to health-related emergencies declared by the State Health Officer.

Subject to appropriation, the bill requires the Division to acquire and maintain a supply of personal protective equipment (PPE)<sup>102</sup> for use by state agencies and to aid local government and the private sector. The Division must conduct regular inventories of the PPE supply, which must include projections of the need for additional PPE as necessary to maintain the supply and replace expired items. The bill requires the initial inventory to be reported to the Legislature, Governor, and the Chief Justice of the Supreme Court by December 31, 2021, and annually thereafter.

The bill requires 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. 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 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. It must include an assessment of state and local public health infrastructure, including information systems, physical plant, commodities and human resources, and 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 plan must be submitted to the Division by July 1, 2022. DOH must review the plan within six months after the termination of each declared public health emergency or every five years, whichever is sooner. The public health emergency management plan must be incorporated into the state comprehensive emergency management plan.

The bill requires existing agency emergency plans to also include provisions related to pandemics and other public health emergencies consistent with the DOH emergency management plan. Such agency plans must be updated by December 31, 2022.

The bill requires the Division to maintain information on special needs shelter options that mitigate the threat of the spread of infectious diseases when physical distancing is necessary, as determined by the State Health Officer. The bill also requires the state's emergency shelter plan to project, for each of the next five years, the hurricane shelter needs for of the state, including periods of time during which a concurrent public health emergency may necessitate more space for each individual to accommodate physical distancing.

Upon a declaration of a public health emergency, the bill requires the State Health Officer to establish, by order, the method and procedure for identifying and reporting cases of and deaths involving the infectious disease or occurrence identified as the bases 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 standard exists, consistent with public health best practices as identified by the State Health Officer. During the emergency, DOH is responsible for the collection and official reporting and publication of cases and deaths. The bill also provides that the State Health Officer may request the assistance of district medical examiners in performing this function. The bill expressly requires medical examiners to perform this function if requested, conditioning the current law requirement to determine deaths by diseases constituting a public health threat upon the State Health Officer's

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<sup>102</sup> The bill defines the term "personal protective equipment" as protective clothing or equipment designed to protect an individual person from injury or the spread of infection."

request. The bill clarifies that s. 406.11, F.S., obligation to determine the cause of death under certain circumstances includes certifying the death, as well.

### Emergency Orders and Delegated Authority

The bill provides that the Legislature may, at any time, terminate a state of emergency or any specific order, proclamation, or rule thereunder by concurrent resolution. The bill clarifies that any delegation of emergency powers by the Governor or Division must be limited to no more than 60 days, and may be renewed as necessary during the duration of the emergency.

The bill provides increased transparency related to emergency orders, proclamations, and rules issued during an emergency. The bill provides that any order, proclamation, or rule must be limited to 60 days and renewed only as necessary during the emergency. If renewed, the order, proclamation, or rule must state with particularity what provisions are being renewed. The bill requires each order, proclamation, or rule issued to specify the statute or rule that is being amended or waived, if applicable, and to provide the expiration date for the order, proclamation, or rule.

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. Any order or proclamation that closes or forces schools or businesses to operate in a restricted capacity must state the specific reasons for such action and must be reassessed regularly.

The bill increases reporting to the Legislature during emergencies. Specifically, all emergency orders must be promptly filed with the Legislature. In addition, the bill requires monthly reports to the Legislature relating to the transfer of personnel or functions of state departments during an emergency.

Beginning July 1, 2022, the bill requires all emergency declarations and orders issued by the Governor or an agency to be immediately filed with the Division of Administrative Hearings (DOAH). DOAH must index the declarations and orders, make them available in a searchable format, and clearly identify the orders that are in effect at any given time. Failure to file an order or declaration within 5 days voids the declaration or order. A link to DOAH's index must be placed in a conspicuous location on the Division's website.

### Emergency Spending, Generally

The bill allows for the Governor to make funds available during a declared state of emergency by transferring and expending moneys specifically appropriated to state and local agencies for disaster relief or response. If the Governor finds that the demands placed upon these funds are unreasonably great, she or he may make funds available by transferring and expending moneys from the Emergency Preparedness and Response Fund (EPR Fund). If additional funds are needed, the Governor may submit a budget amendment to the Legislative Budget Commission to request that additional funds be appropriated to the EPR Fund.

The bill authorizes the Legislative Budget Commission to convene to transfer unappropriated surplus funds to the EPR Fund as necessary.

The bill provides that whenever a state agency or political subdivision accepts assistance in aid of or for the purpose of emergency prevention, recovery, mitigation, preparedness, and management other than emergency response, the agency or political subdivision must submit to the Legislature, in advance, a detailed spending plan for the money. When the advanced 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 day of the emergency as long as

funds continue to be disbursed. This requirement does not apply to the receipt of funds received from any agency, department, or other affiliated entity of the federal government as part of an expedited worksheet in anticipation of emergency response expenditures.

For emergency response activities, including emergency response that includes emergency protective measures or debris removal, the bill requires the agency or political subdivision must submit to the Legislature a report of all expenditures in aggregate categories incurred in the emergency response no later than 30 days after the expenditure is incurred. The entity must also submit a copy of any project worksheet submitted to the Federal Emergency Management Agency (FEMA) within 7 days of when the document is submitted to FEMA.

### Spending and Audits during Long-term Emergencies

The bill provides for increased transparency and accountability once an emergency exceeds specified timeframes. Once an emergency exceeds 90 days, the bill requires the Executive Office of the Governor or the agency responding to the emergency to submit a copy of any contract executed with moneys authorized for expenditures to support the declared state of emergency to the Legislature within 72 hours of executing the contract, and within 30 days of the 90th day of the declared emergency for contracts executed during the first 90 days. In addition, once the emergency exceeds 90 days, the Governor must begin submitting monthly reports to the Legislature of all state expenditures, revenue received, and funds transferred by agency during the month to support the emergency.

Once an emergency exceeds one year, the Auditor General must conduct a financial audit of all associated expenditures and a compliance audit of all associated contracts entered into during the emergency. The audit must be updated annually until the emergency terminates. Once the emergency terminates, the Auditor General must conduct an additional audit that addresses the entire emergency.

### Local Emergency Orders

The bill defines the term “emergency order” as an order or ordinance issued or enacted by a political subdivision in response to an emergency pursuant to the Act or chapter 381, F.S., that limits the rights or liberties of individuals or businesses within the political subdivision, other than those issued in response to hurricanes or other weather-related emergencies.

The bill provides that the intent of the Legislature is to minimize the negative effects of an emergency order issued by a political subdivision. As such, the bill requires an emergency order issued by a political subdivision to be narrowly tailored and limited in duration, applicability, and scope to reduce any infringement on the rights or liberties of individuals and businesses to the greatest extent possible.

The bill provides that an emergency order automatically expires seven days after issuance and may be extended, as necessary, by a majority vote of the governing body in seven-day increments for a total duration of 42 days.

The bill provides that the failure of a local government to file an emergency order or rule adopted pursuant to ch. 252, F.S., with the office of the clerk or recorder within 3 days after issuance voids the order or rule. The bill also requires local government emergency ordinances, declarations, and orders to be available on a dedicated webpage accessible through a conspicuous link on the local government’s homepage. The dedicated website must identify the ordinance, declaration, and orders currently in effect. The local government must provide the Division with a link to the website and the Division must include the link on its website.



The bill provides that an order issued by a local government that imposes a curfew restricting travel or movement must allow persons to travel to their places of employment and to return to their residences after their work has concluded.

The bill provides that the Governor may, at any time, invalidate an emergency order issued by a political subdivision if the Governor determines that such order unnecessarily restricts rights or liberties.

### Public Gift Ban

The bill allows for the Governor, Lieutenant Governor, Surgeon General, the Director of the Division, the President of the Senate, and the Speaker of the House of Representatives to disseminate public service announcements during a state of emergency concerning the emergency without violating provisions relating to the Gift Ban.

### Vaccine Documentation

The bill prohibits governmental entities from requiring documentation of COVID-19 vaccination, or post-infection recovery, to enter the government location or obtain government services. The prohibition applies to the state, any political subdivision of the state, independent establishments of the state, counties, municipalities, districts, authorities, boards, commissions, and agencies subject chapter 286, F.S. (governing public meetings and records).

The bill prohibits business entities operating in Florida from requiring customers to provide documentation of COVID-19 vaccination, or post-infection recovery, to enter the business or access the business' services. The prohibition applies to businesses all forms of corporations, partnerships, associations, cooperatives, joint ventures, business trusts, sole proprietorships, charitable organizations (as defined in s. 496.404, F.S.) and not for profit corporations (as defined in s. 617.01401, F.S.) that conduct business in this state.

Similarly, the bill also prohibits educational institutions from requiring students or residents to provide documentation of COVID-19 vaccination, or post-infection recovery, to enter the institution or obtain services from the institution. The prohibition applies to public and nonpublic preschools, elementary schools, middle schools, junior high schools, secondary schools, career centers and postsecondary schools.

The bill establishes an exemption from the vaccine documentation prohibition for health care providers. The exception applies to all health care facilities, practitioners and professionals regulated by the Agency for Health Care Administration (AHCA) or DOH, mental health and substance abuse service providers regulated by the Department of Children and Families, behavior analysis service providers certified by the Agency for Persons with Disabilities, health care clinic providers with certificates of exemption from AHCA, federally certified laboratories, federally qualified health centers, continuing care facilities regulated by the Department of Financial Services.

The bill expressly provides that its terms do not prevent a government entity, business or educational institution from using screening protocols consistent with authoritative or controlling government-issued guidance to protect public health.

The bill authorizes the Department of Health to issue fines to businesses, educational institutions and governmental entities for violations of its terms. DOH may not issue fines in an amount greater than \$5,000 per violation. The bill authorizes DOH to adopt rules to implement this provision.

## **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:

The bill provisions prohibiting businesses and educational institutions from requiring vaccine documentation may limit their ability to attract some types of customers and students and may prevent or delay full operation of some business activities.

D. FISCAL COMMENTS:

The fiscal impact of this bill is indeterminate. The bill requires DOAH to index all emergency declarations and orders and make them available in a searchable format on its website within 3 days of filing. The bill specifies that such declarations and orders must be searchable by term, statute and rule, and must include a search category that specifically identifies emergency orders that are in effect at any given time. The impact is not expected to be significant.

During long-term emergencies, the bill requires the Governor to provide increased reporting to the Legislature. The costs associated with such reporting should be insignificant. The bill also requires the Auditor General to conduct specified audits for any emergency that lasts longer than one year, and for every emergency after the emergency expires. As such, there will be an indeterminate negative fiscal impact on expenditures of the Auditor General, but it is anticipated that the impact can be absorbed within existing resources.

The bill requires DOH 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.

The bill requires the Division to acquire and maintain an inventory of PPE and replace and maintain the inventory as necessary to ensure that the supplies are not expired. This provision, however, is subject to appropriation by the Legislature.

The bill authorizes DOH to issue fines not exceeding \$5,000 per violation to an unlimited category of businesses, schools, and government entities. This may have a significant, negative impact on DOH requiring additional staff, and may have a significant positive impact on DOH from the revenue generated by such fines. However, the scope of such activity is indeterminate, as the number of

violations is unknown and cannot be estimated. It is unclear where such fine revenue would be deposited, as the activity required by the bill is not assigned to a particular division for which an existing trust fund exists.