

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 945 Emergency Management Powers of Political Subdivisions

SPONSOR(S): Local Administration & Veterans Affairs Subcommittee, Pandemics & Public Emergencies Committee, Rommel and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Pandemics & Public Emergencies Committee	12 Y, 6 N, As CS	Nations	Dearden
2) Local Administration & Veterans Affairs Subcommittee	11 Y, 5 N, As CS	Renner	Miller
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida law provides that 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 of Emergency Management (division) or by any state agency exercising a power delegated to it by the Governor or the division. 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. The duration of a local state of emergency is seven days, but may be extended in seven-day increments as necessary.

The bill defines the term “emergency order” is an order or ordinance issued by a political subdivision in response to an emergency pursuant to the Emergency Management Act or ch. 381, F.S., relating to public health emergencies, that limits the rights or liberties of individuals or businesses within a political subdivision.

The bill provides that the intent of the Legislature is to minimize the negative effects of an extended 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 individual liberty to the greatest extent possible.

The bill provides that an emergency order automatically expires seven days after issuance and may be extended, as necessary, in seven-day increments for a total duration of 42 days. A political subdivision is prohibited from entering a substantially similar emergency order after the emergency order has expired.

The bill provides that the governing body of the political subdivision may extend an emergency order only by a majority vote and the political subdivision may do so remotely through electronic means for the sole purpose of extending the emergency order. The order extending the emergency order must recite the circumstances requiring remote convening and voting, the method or methods of electronic means used to convene and vote, and the governing body’s finding of necessity to convene and vote by electronic means.

The Governor, or the Legislature by concurrent resolution, may at any time invalidate an emergency order issued by a political subdivision if the Governor or Legislature determines the order unnecessarily restricts individual liberty.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State Emergency Management Act

The State Emergency Management Act (Act),¹ establishes the framework for how Florida prepares, responds, and recovers from emergencies and disasters. It confers upon the Governor, the Division of Emergency Management (division),² and the governing body of each county and municipality certain emergency powers in the event of emergencies³ and disasters⁴ resulting from natural,⁵ technological,⁶ or manmade⁷ 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.⁸

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

Governor

The Act vests the authority to declare a state of emergency in the Governor.⁹ The 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.¹⁰ This authority includes issuing executive orders, proclamations, and rules that have the force and effect of law.¹¹ 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.¹² Although the emergency powers reside in the

¹ See ch. 252, F.S.

² The Division of Emergency Management 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. S. 14.2016(1), F.S.

³ "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. S. 252.34(4), F.S.

⁴ "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.

⁵ "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. S. 252.34(8), F.S.

⁶ "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. S. 252.34(10), F.S.

⁷ "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. S. 252.34(7), F.S.

⁸ S. 252.32, F.S.

⁹ S. 252.36(2), F.S.

¹⁰ S. 252.36(1)(a), F.S.

¹¹ S. 252.36(1)(b), F.S.

¹² S. 252.36(5)(b), F.S.

Governor, the Governor may delegate certain powers to the State Coordinating Officer to manage and coordinate emergency efforts.¹³

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.¹⁴

Political Subdivisions

Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision¹⁵ of the state.¹⁶ Political subdivisions 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.¹⁷

Political subdivisions are authorized 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.¹⁸ A state of local emergency may only be declared by a mayor, city manager, or board of county commissioners.¹⁹ The duration of a local state of emergency is seven days, but may be extended in seven-day increments as necessary.

Political subdivisions 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.²⁰ 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 \$500.²¹

Public Health Emergencies

The State Health Officer is responsible for declaring public health emergencies, issuing public health advisories, and ordering isolation or quarantines.²² The term “public health emergency” specifically includes occurrences whether natural or manmade that result or may result in substantial injury or harm to the public health.²³ 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.²⁴ A public health

¹³ 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 of Emergency Management as the SCO and the State Health Officer and Surgeon General as a Deputy SCO.

¹⁴ S. 252.36(8), F.S.

¹⁵ The Act defines “political subdivision” any county or municipality created by law. S. 252.32(9), F.S.

¹⁶ S. 252.38, F.S.

¹⁷ S. 252.38(1)(a), F.S.

¹⁸ S. 252.38(3)(a)5., F.S.

¹⁹ Division of Emergency Management, *2020 State Comprehensive Emergency Management Plan*, p. 15, <https://www.floridadisaster.org/globalassets/cemp/2020-cemp/2020-state-cemp.pdf> (last visited March 15, 2021).

²⁰ S. 252.46, F.S.

²¹ See s. 252.50, F.S.

²² S. 381.00315, F.S.

²³ S. 381.00315(1)(c), F.S.

²⁴ *Id.*

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:²⁵

- 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).²⁶ Any order of the department issued must be immediately enforceable by a law enforcement officer under s. 381.0012, F.S.²⁷

Effect of the Bill

The bill defines the term “emergency order” as an order or ordinance issued by a political subdivision in response to an emergency pursuant to the State Emergency Management Act or ch. 381, F.S., relating to public health emergencies, that limits the rights or liberties of individuals or businesses within a political subdivision.

The bill provides that the intent of the Legislature is to minimize the negative effects of an extended 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 individual liberty to the greatest extent possible.

The bill provides that an emergency order automatically expires seven days after issuance and may be extended, as necessary, in seven-day increments for a total duration of 42 days. A political subdivision is prohibited from entering a substantially similar emergency order after the emergency order has expired.

The bill provides that the governing body of the political subdivision may extend an emergency order only by a majority vote. Only for the purpose of extending an emergency order, the governing body of the political subdivision may convene and vote remotely through electronic means. The order extending the emergency order must recite the circumstances requiring remote convening and voting, the method or methods of electronic means used to convene and vote, and the governing body’s finding of necessity to convene and vote by electronic means.

The Governor, or the Legislature by concurrent resolution, may at any time invalidate an emergency order if the Governor or Legislature determines the order unnecessarily restricts individual liberty.

B. SECTION DIRECTORY:

Section 1: Amends s. 252.38, F.S., providing a definition for an emergency order issued by a political subdivision, specifying requirements for purpose and scope, and for the expiration and renewal of such orders.

Section 2: Provides an effective date of July 1, 2021.

²⁵ *Id.*

²⁶ S. 381.00315(4), F.S.

²⁷ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The Florida Constitution requires a strict separation of powers, prohibiting one branch of state government from exercising any of the powers apportioned to another.²⁸ The Legislature has the sole authority to enact general and special laws and to appropriate state funds.²⁹ The Governor is responsible for the faithful execution of the laws.³⁰ However, in the event the Governor declares a state of emergency,³¹ current law provides the Governor with broad powers including the authority to issue executive orders, proclamations, and rules that have the force and effect of law,³² and the authority to make funds available to meet the demands of the emergency, under certain conditions.³³ Furthermore, current law provides that the Legislature by concurring resolution may terminate a state of emergency declared by the Governor at any time and the Governor must then issue an executive order or proclamation terminating the state of emergency.³⁴

²⁸ Art. II, s. 3, Fla. Const.

²⁹ Art. III, ss. 6, 19, Fla. Const.

³⁰ Art. IV, s. 1(a), Fla. Const.

³¹ S. 252.36(2), F.S.

³² S. 252.36(1)(b), F.S.

³³ S. 252.37, F.S.

³⁴ S. 252.36(2), F.S.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 9, 2021, the Pandemics & Public Emergencies Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the referendum requirement;
- Provides legislative intent;
- Specifies requirements for purpose and scope of significant emergency orders; and
- Provides that significant emergency orders automatically expire seven days after issuance, but may be extended, as necessary, in seven-day increments for a total duration of not more than 42 days.

On April 1, 2021, the Local Administration & Veterans Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the word “significant” from the definition of an emergency order;
- Revises the order’s limits on the rights or liberties of individuals or businesses within the political subdivision;
- Removes the exception for first responders;
- Provides that the governing body of the political subdivision may extend an emergency order only by a majority vote and the political subdivision may convene and vote remotely through electronic means, but only for extending such an order; and
- Provides that the Governor, or the Legislature by concurrent resolution, may at any time invalidate an emergency order if the Governor or Legislature determines the order unnecessarily restricts individual liberty.

This analysis is drafted to the committee substitute as approved by the Local Administration & Veterans Affairs Subcommittee.