

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7023 PCB PPE 22-02 Emergency Preparedness and Response Fund
SPONSOR(S): Pandemics & Public Emergencies Committee, Trabulsy
TIED BILLS: HB 7025 **IDEN./SIM. BILLS:** SB 98

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Pandemics & Public Emergencies Committee	10 Y, 6 N	Landry	Williamson
1) Appropriations Committee	19 Y, 6 N	Harrington	Pridgeon

SUMMARY ANALYSIS

The Governor is vested with broad emergency management powers, including the power to declare a state of emergency through the issuance of executive orders and proclamations. During an emergency, the Governor is authorized to utilize all resources of state government and counties and municipalities of the state as reasonably necessary to cope with the emergency. The policy of the state is that funds to meet emergencies must always be available. The Governor must first utilize funds regularly appropriated to state and local agencies and thereafter, the Governor may transfer and expend funds appropriated for other purposes, unappropriated surplus funds, and funds in the Budget Stabilization Fund. 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 specific trust fund available for emergency spending during a declared state of emergency.

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

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

The bill does not appear to impact local governments.

Article III, s. 19(f) of the Florida Constitution requires every trust fund to be created by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of creating a trust fund. The bill creates a trust fund; thus, it requires a three-fifths vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 252, F.S., governs emergency management. It confers upon the Governor, the Division of Emergency Management (division),¹ and the governing body of each county and municipality certain emergency powers in the event of emergencies² and disasters³ resulting from natural,⁴ technological,⁵ or manmade⁶ 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.⁷

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

Governor

The State Emergency Management Act (Act)⁸ 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.⁹ This authority includes issuing executive orders, proclamations, and rules that have the force and effect of law.¹⁰ 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.¹¹ 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.¹²

¹ 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.

² "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.

³ "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.

⁴ "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.

⁵ "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.

⁶ "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.

⁷ Section 252.32, F.S.

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

⁹ Section 252.36(1)(a), F.S.

¹⁰ Section 252.36(1)(b), F.S.

¹¹ Section 252.36(5)(b), F.S.

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

The Act, in part, authorizes the Governor to:

- Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of any state agency, if strict compliance would in any way prevent, hinder, or delay necessary action in coping with the emergency;
- Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;
- Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles; however, the Governor may not seize, take, or confiscate firearms that are lawfully possessed, unless a person is engaged in the commission of a criminal act;
- Make provision for the availability and use of temporary emergency housing;
- Take effective measures for limiting or suspending lighting devices and appliances, gas and water mains, electric power distribution, and all other utility services in the general public interest;
- Take measures concerning the conduct of civilians, the movement and cessation of movement of pedestrian and vehicular traffic at certain times, the calling of public meetings and gatherings, and the evacuation and reception of the civilian population, as provided in the emergency management plan of the state and counties and municipalities; and
- Authorize businesses and their employees who sell commodities¹³ to exceed the times of curfews for ensuring that the supplies of commodities are made available to the public and direct local law enforcement to assist and accommodate those businesses and their employees in ensuring that commodities are available in coping with the emergency.¹⁴

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.¹⁵

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

Division of Emergency Management

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

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

¹³ "Commodity" to means 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. Section 501.160(1)(a), F.S

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

¹⁵ Section 252.36(8), F.S.

¹⁶ Section 252.36(4), F.S.

¹⁷ Section 14.2016(1), F.S.

government and private agencies.¹⁸ 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;¹⁹
- 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; and
- Doing other things necessary, incidental, or appropriate for implementing emergency management.²⁰

Declaring a State of Emergency

The Governor is authorized to declare a state of emergency by executive order or proclamation when an emergency has occurred or the occurrence or threat thereof is imminent.²¹ A declared state of emergency is limited to 60 days, unless renewed by the Governor or terminated by the Legislature.²² 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.²³ Executive orders must be promptly disseminated to bring its contents to the attention of the general public and, unless the emergency prevents or impedes, must be filed promptly with the Department of State, the President of the Senate, and the Speaker of the House of Representatives, and in the offices of the county commissioners in the counties the order applies.²⁴

Financing

Emergency Spending Authority

The policy of the state is that funds to meet emergencies must always be available.²⁵ 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.²⁶ Such funds, when accessed, are appropriated through emergency budget amendments that are approved by the Governor and posted on the appropriations ledger. Following the expiration or termination of the state of emergency, the Governor may transfer funds with a budget amendment, subject to approval by the Legislative Budget Commission, to satisfy the budget authority granted for such emergency.²⁷ There is no dedicated source for the Governor to use during an emergency.

General Revenue Fund

¹⁸ *Id.* and s. 252.35(1), F.S.

¹⁹ Chapter 120, F.S.

²⁰ See s. 252.35, F.S.

²¹ Section 252.36(2), F.S.

²² Section 252.36(2), F.S.

²³ Section 252.36(2), F.S.

²⁴ Section 252.36(2), F.S.

²⁵ Section 252.37(1), F.S.

²⁶ Section 252.37(2), F.S.

²⁷ Section 252.27(2), F.S.

The General Revenue Fund consists of all moneys received by the state from every source, except for those funds designated to be deposited into trust funds or the Budget Stabilization Fund. Funds in the General Revenue Fund are expended as provided in the General Appropriations Act or other legislation, transferred to the Budget Stabilization fund,²⁸ or maintained as unallocated general revenue. Unallocated general revenue is considered the working capital balance of the state and consists of moneys in the General Revenue Fund that are in excess of the amount needed to meet General Revenue Fund appropriations for the current year.²⁹

Trust Funds

Trust funds consist of moneys received by the state that under law or trust fund agreement, are segregated for a purpose authorized by law.³⁰ The state agency or branch of state government that receives or collects such moneys is responsible for their proper expenditure.³¹ Trust funds are created by the Legislature through statutory language specifying at least the following:

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes that the trust fund is established to meet; and
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.³²

Newly created trust funds must be approved by a three-fifths of the membership of each house for passage and must be in a separate bill.³³ The Legislature must review all state trust funds at least once every four years.³⁴

Effect of the Bill

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

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

B. SECTION DIRECTORY:

Section 1: Creates s. 252.3711, F.S., creating the EPR Fund within the Executive Office of the Governor.

Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

²⁸ See s. 215.32(2)(c), F.S.

²⁹ Section 215.32(2)(a), F.S.

³⁰ Section 215.32(2)(b)1., F.S.

³¹ *Id.*

³² Section 215.3207(1)-(4), F.S.

³³ Section (f), Art. III, State Constitution and s. 215.3207, F.S.

³⁴ Section (f)(2), Art. III, State Constitution and s. 215.3208(1), F.S.

2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Because the EPR Fund provides a primary source for funds during a declared state of emergency, the bill should reduce, at least to the extent of funds available in the EPR Fund, the need for the Governor to access funds appropriated for other purposes, unappropriated surplus funds, and funds in the Budget Stabilization Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.