

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 7025 PCB PPE 22-01 Emergency Preparedness and Response Fund
SPONSOR(S): Appropriations Committee; Pandemics & Public Emergencies Committee; Tralulsky
TIED BILLS: HB 7023 **IDEN./SIM. BILLS:** CS/SB 96

FINAL HOUSE FLOOR ACTION: 95 Y's 22 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 7025 passed the House on February 10, 2022, as CS/SB 96.

The Governor is vested with broad emergency management powers, including the power to declare a state of emergency by executive order or proclamation. 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.

This bill provides that it is the intent of the Legislature that funding for disaster relief or response first come from funds specifically appropriated to state and local agencies. If the Governor finds that demands placed upon these funds are unreasonably great, the bill authorizes the Governor to make funds available by transferring and expending funds from the Emergency Preparedness and Response Fund (EPR Fund), which is created by SB 98 (2022).

If additional funds are needed, the bill authorizes the Governor to submit a budget amendment to the Legislative Budget Commission (LBC) requesting additional funds be appropriated to the EPR Fund. The bill authorizes the LBC to convene to transfer unappropriated surplus funds to the EPR Fund as necessary.

Following the expiration or termination of the state of emergency, if the Governor requests the LBC to approve fund transfers and expenditures through budget amendments, the bill requires such transfers and expenditures to be directly related to the declared disaster or emergency.

The bill appropriates \$500 million in nonrecurring funds from the General Revenue Fund to the EPR Fund.

The bill was approved by the Governor on February 17, 2022, ch. 2022-1, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

¹³ "Commodity" 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.

emergency management and coordinating efforts of the federal government with state and local 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 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 (LBC), to satisfy the budget authority granted for such emergency.²⁷ There is no dedicated source for the Governor to use during an emergency.

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.

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.²⁸ The state agency or branch of state government that receives or collects such moneys is responsible for their proper expenditure.²⁹ 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.³⁰

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.³¹ The Legislature must review all state trust funds at least once every four years.³²

SB 98 (2022)

SB 98 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 the purposes of preparing for or responding to an emergency that exceeds regularly appropriated funding sources during a declared state of emergency.

Effect of the Bill

This bill provides that it is the intent of the Legislature that funding for disaster relief or response to first come from funds specifically appropriated to state and local agencies for disaster relief or response. If the Governor finds that demands placed upon these funds are unreasonably great, the bill authorizes the Governor to make funds available by transferring and expending funds from the EPR Fund.

If additional funds are needed, the bill authorizes the Governor to submit a budget amendment to the LBC requesting additional funds be appropriated to the EPR Fund. The bill authorizes the LBC to convene to transfer unappropriated surplus funds to the EPR Fund as necessary. Under the bill, the Governor is not authorized to transfer or expend funds appropriated for other purposes, out of any unappropriated surplus funds, or from the Budget Stabilization Fund.

Following the expiration or termination of the state of emergency, if the Governor requests the LBC to approve fund transfers and expenditures through budget amendments, the bill requires such transfers and expenditures to be directly related to the declared disaster or emergency.

The bill directs the Chief Financial Officer to immediately transfer the nonrecurring sum of \$500 million from the General Revenue Fund to the EPR Fund to be used for preparing for and responding to a disaster declared by the Governor as a state of emergency.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

²⁸ Section 215.32(2)(b)1., F.S.

²⁹ *Id.*

³⁰ Section 215.3207(1)-(4), F.S.

³¹ Section (f), Art. III, State Constitution and s. 215.3207, F.S.

³² 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:

The bill allows the Governor to expend funds to respond to a declared state of emergency from the EPR Fund. The bill directs the transfer of \$500 million in nonrecurring funds from the General Revenue Fund to the EPR Fund, and authorizes the Governor to request the LBC to allow for additional transfers into the fund.