

The Florida Senate  
**COMMITTEE MEETING EXPANDED AGENDA**

**SELECT COMMITTEE ON PANDEMIC PREPAREDNESS  
AND RESPONSE**

**Senator Burgess, Chair  
Senator Bracy, Vice Chair**

**MEETING DATE:** Monday, March 1, 2021

**TIME:** 1:30—3:30 p.m.

**PLACE:** *Pat Thomas Committee Room, 412 Knott Building*

**MEMBERS:** Senator Burgess, Chair; Senator Bracy, Vice Chair; Senators Ausley, Book, Bradley, Brandes, Brodeur, Harrell, Perry, and Pizzo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	Presentation of Draft Report		Presented
2	Presentation by the Florida Department of Economic Opportunity		Presented
Other Related Meeting Documents			



# **SENATE SELECT COMMITTEE ON PANDEMIC PREPAREDNESS AND RESPONSE**

## **Phase 1 Report on the COVID-19 Pandemic**

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Senator Danny Burgess, *Chair*

Senator Randolph Bracy, *Vice Chair*

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## **Introduction**

COVID-19 is a respiratory illness that was first discovered in Wuhan, China sometime toward the end of 2019. The virus was first reported in the United States in Washington State on January 19, 2020.

Florida's first two cases of COVID-19 were officially confirmed by the Department of Health on March 2, 2020. The virus quickly spread, and on March 11, 2020, the World Health Organization declared novel coronavirus, named "COVID-19," a Global Pandemic.

Florida law related to emergency management has worked very well for emergencies such as hurricanes and fires. During such emergencies, the Division of Emergency Management (DEM) leads state and local efforts, ensures communication between affected local, state, and federal responders, and ensures communications to leaders, including members of the Legislature. Florida is a model when it comes to managing these types of acute emergencies.

The COVID-19 pandemic has been different in complexity, magnitude, and length.

Personal protective equipment (PPE) was unavailable, even for front-line health care providers and first responders. Ventilators were in short supply, and treatments for the virus were few. Medical and scientific advice was to use PPE, physically distance from other individuals, and wash hands frequently, as the deadly virus continued to spread. However, due to a number of factors including the unavailability of PPE, the ease of spread of the virus, and the associated deaths of primarily older people, state and local leaders quickly began to shut down businesses, elective surgeries, travel, and schools. These actions had an immediate impact on the economy.

Because of the pandemic, children were no longer able to have in-person teaching—a situation that is especially challenging for vulnerable children, children with special needs, and low income students with limited or no access to technology. According to the Centers for Disease Control and prevention (CDC) the primary risk factors children and young people face during the pandemic are: changes in routine from family and friends, breaks in continuity of learning, breaks in continuity of healthcare, missed significant life events, and lost security and safety.

Governments continue to learn how to best inform the citizenry during the current pandemic. Certainly, Florida's communications and information dissemination during hurricanes, including regular, scheduled communications with legislators and other state and local agencies, is a model. Pandemics and health emergencies need at least this same level of communication, and arguably need an even more robust data and communication strategy due to the length of such an event and the ability of the citizens themselves to affect the outcomes.

As state and local governments began to make decisions on how communities and the state would proceed, efforts at the federal level were transferred by the White House from the federal Department of Health and Human Services (HHS), to FEMA. COVID-19 became the first national pandemic response that FEMA has led since the agency was established in 1979. FEMA reported that this change in leadership and the complexity and magnitude of the response led to challenges in coordination and communication with several state, local, tribal, and territorial (SLTT) partners, and contributed to inconsistent provision of support, difficulty in allocation of resources, ambiguity in cost share obligations, and delays in engagement with some SLTTs. At the state level, a myriad of executive actions, both from delegated and sub delegated authority, including orders, directives, emergency rules,

informational updates, and guidance, depending on the agency issuing the information, have been issued since early 2020. Local governments also enacted ordinances and issued orders impacting their respective jurisdictions.

Lessons were being learned every day, and the state response improved as weeks and months passed. In addition, federal financial assistance, passed in three pieces of legislation, provided much needed relief.

It was learned that in communities where COVID numbers were already low, schools did not seem to contribute to the virus' spread. Evidence has increased that schools, particularly elementary schools, are unlikely to seed transmission when community spread is at moderate or low levels — provided they use strict mitigation strategies, including mask requirements, physical distancing and good ventilation. Evidence also suggests that these same mitigation strategies implemented at other businesses or community locations help contain overall community spread.

On a per-100,000 resident basis, Florida has recorded 8,746 cases as of February 24, 2021—fewer than 27 other states. On a per-100,000 resident basis, Florida has recorded 141 deaths, which ranks lower than 26 states and Washington D.C., despite Florida's significant elderly population compared to other states. Of the ten most populous states, Florida ranks fifth in caseload per 100,000 residents; however, of these states, only North Carolina and California have experienced fewer deaths per 100,000 than Florida.

A pandemic of this scale has not been experienced in more than 100 years, with more than 111 million cases worldwide and more than 2.4 million deaths as of February 24, 2021. The challenges experienced by citizens, businesses, and all levels of government are of a magnitude and duration that has stressed the world beyond our collective experiences in modern history.

This report is intended to begin the process of looking at lessons learned, identifying areas where improvement is needed, identifying best practices where they exist, and identifying options for the path forward. This report represents the work of the committee, so far, toward improved planning and preparation going forward.

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## **Options**

The following options represent those issues that can most immediately be considered by the Legislature, based upon the work of the committee thus far. All of the options would be included in chapter 252, Florida Statutes, except for the last bullet which would be addressed in chapter 364, Florida Statutes.

The legislature may want to consider:

- Providing legislative intent that all aspects of emergency preparedness, response, and recovery be transparent to the public to the greatest extent possible, and include a requirement for a searchable index of emergency executive orders.
- Adding a rebuttable presumption schools and businesses should remain open, provided this can occur safely.

- In the emergency management powers of the Governor, require emergency management activities, including the suspension of regulatory statutes, and funding decisions be consistent with legislative policy and intent.
- Limiting the duration of executive orders based upon emergency authority, including those issued under delegated or sub-delegated authority, to 30 days, with the ability to reissue those orders if the emergency conditions persist. Requiring executive orders be filed with the Senate and the House of Representatives, as well as with the Secretary of State which is the current requirement.
- Expanding the legislature's authority to include the ability to terminate any specific executive order or directive issued, related to the declared emergency, without terminating the primary declaration of the state of emergency. Currently, the legislature by concurrent resolution can only terminate a declaration of a state of emergency.
- Requiring transfers of direction, personnel, or functions of state departments be promptly reported to the Senate and the House of Representatives on a monthly basis until the transfer(s) ceases. These monthly reports should be cumulative.
- Regarding financing, limiting the time budget amendments can occur without the involvement of the LBC, and allowing the LBC to approve proposed amendments in whole or in part, and specifying that budget amendments must be directly related to the declared emergency. Currently, the LBC does not have the authority to approve a portion of a proposed budget amendment. The legislature could also, for federal funds received as a result of an emergency, require a detailed spending plan be submitted, in advance, to the Senate and House of Representatives. If the emergency situation precludes timely submission of the detailed spending plan in advance, it could be submitted as soon as possible up to 30 days after initiation, and continuing every 30 days so long as the emergency continues or funds continue to be disbursed.
- Specifically including the term "public health emergencies" in various provisions of chapter 252, Florida Statutes.
- Including the Centers for Disease Control in the list of federal emergency management agencies with which the Division of Emergency Management (DEM) must cooperate.
- Specifying the shelter registration program shall consider public health emergency situations.
- Specifying in the section regarding ensuring availability of emergency supplies, the term "essentials" includes personal protective equipment (PPE).
- Requiring Continuity of Operation Plans (COOP) to be updated, and include availability and distribution of PPE. Also, requiring that these plans consider and include preparedness for rapid and large-scale increases in the public's need to access government services through technology or other means during an emergency such as the COVID-19 pandemic.
- Requiring DEM to complete and maintain an inventory of PPE owned by the state, and report the initial inventory to the Governor, the Senate, and the House of Representatives by December 31, 2021. Also providing that DEM may keep a list of private entities who offer PPE. This is currently done for generators for nursing homes.
- Modifying the duties of the Florida Office of Broadband by expanding its requirement to create a strategic plan. The expansion would require short and long-term goals and strategies for increasing and improving the availability of and access to broadband internet services in Florida,

and incorporate applicable federal broadband activities, including efforts or initiatives of the Federal Communications Commission to improve broadband services in Florida.

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## **COVID-19**

COVID-19 is a respiratory illness first discovered in Wuhan, China sometime toward the end of 2019. The virus quickly spread, and on March 11, 2020, the World Health Organization declared the disease caused by the novel coronavirus, named “COVID-19,” a Global Pandemic.<sup>1</sup> COVID-19 was first reported in the United States when a 35-year-old man presented to an urgent care clinic in Snohomish County, Washington, with a 4-day history of cough and subjective fever,” on January 19, 2020.<sup>2</sup> Early on, New York City became the epicenter of infections in the United States.<sup>3</sup> Florida’s first two cases of COVID-19 were officially confirmed by the Department of Health on March 2, 2020.<sup>4</sup> On March 17, 2020, West Virginia reported their first case of COVID-19 in the state, confirming that all 50 states had declared a presence of the disease.<sup>5</sup>

According to the Florida Department of Health (DOH), as of February 27, 2021, Florida has had 1,909,221 total cases, and 79,344 hospitalizations. The DOH also reports 30,852 Florida resident deaths, and 554 non-resident deaths.<sup>6</sup> (See [Appendix A, Summary of Cases and Monitoring](#).) On February 28 2021, the Centers for Disease Control (CDC) reported 28,355,420 total confirmed cases in the United States, and 510,777 confirmed total deaths from COVID-19.<sup>7</sup> According to the CDC, “[v]iruses constantly change through mutation, and new variants of a virus are expected to occur over time.”<sup>8</sup> Currently, there are three variants of concern that are spreading throughout the world, one identified originally in the United Kingdom, one first identified in South Africa, and one that emerged from Brazil.<sup>9</sup> Each variant

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<sup>1</sup> <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited February 15, 2021).

<sup>2</sup> <https://www.nejm.org/doi/full/10.1056/NEJMoa2001191> (last visited February 15, 2021).

<sup>3</sup> [https://www.cdc.gov/mmwr/volumes/69/wr/mm6946a2.htm?s\\_cid=mm6946a2\\_w](https://www.cdc.gov/mmwr/volumes/69/wr/mm6946a2.htm?s_cid=mm6946a2_w) (last visited February 15, 2021).

<sup>4</sup> <https://www.usatoday.com/story/news/nation/2020/05/05/patients-florida-had-symptoms-covid-19-early-january/3083949001/> (last visited February 15, 2021).

<sup>5</sup> <https://abcnews.go.com/Health/timeline-coronavirus-started/story?id=69435165> (last visited February 15, 2021).

<sup>6</sup> <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429> (last visited February 15, 2021).

<sup>7</sup> [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days) (last visited February 15, 2021).

<sup>8</sup> <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last visited February 15, 2021).

<sup>9</sup> <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last visited February 15, 2021).

- The **United Kingdom** (UK) identified a variant called B.1.1.7 with a large number of mutations in the fall of 2020. This variant spreads more easily and quickly than other variants. It has since been detected in many countries around the world. This variant was first detected in the US at the end of December 2020.
- In **South Africa**, another variant called B.1.351 emerged independently of B.1.1.7. Originally detected in early October 2020, B.1.351 shares some mutations with B.1.1.7. Cases caused by this variant have been reported in the US at the end of January 2021.
- In **Brazil**, a variant called P.1 emerged that was first identified in travelers from Brazil, who were tested during routine screening at an airport in Japan, in early January. This variant contains a set of additional

had been identified in the United States by January 2021. Scientists continue to study the variants' spread as well as the implications for "... existing therapies, vaccines, and tests."<sup>10</sup>

A pandemic of this scale has not been experienced in more than 100 years. The challenges experienced by citizens, businesses, and all levels of government are of a magnitude and duration that has stressed the world beyond our collective experiences in modern history.

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## **Economy**

On March 17, 2020, the governor issued Executive Order Number 20-68, in recognition of the President and Centers for Disease Control and Prevention (CDC) guidance to slow the spread of the coronavirus by adopting far-reaching social distancing measures, such as working from home and avoiding gatherings of more than 10 people.<sup>11</sup> This order began the imposition of significant restrictions in Florida, including but not limited to:

- Suspending all sale of alcoholic beverages for 30 days for businesses that derive more than half of their gross revenue from the consumption of alcohol on premises.
- Gatherings at public beaches can include no more than 10 persons, and parties must distance themselves from other parties by 6 feet.
- Restaurants must immediately limit their occupancy to half of their current building occupancy, and must ensure at minimum, a 6-foot distance between groups of patrons; parties can be no more than 10 individuals.<sup>12</sup>

As the virus continued to spread, subsequent Executive Orders continued to shut down or restrict businesses from operating in order to slow the spread of virus.<sup>13</sup> On March 20, 2020, Broward and Palm Beach Counties followed Miami Dade County by closing public beaches altogether, and ordering the close of movie theatres, concert houses, auditoriums, playhouses, bowling alleys, arcades, gymnasiums, fitness studios, and specified other restrictions on businesses.<sup>14</sup> In addition, travel restrictions were imposed, further impacting an economy dependent on tourism.

By April 2020, the conversation had turned to how to re-open Florida.<sup>15</sup> At that time, Visit Florida reported a year-over-year reduction in hotel demand, by week, as follows:

- March 1 – 6.1% reduction,
- March 8 – 22.1% reduction,
- March 15 – 58.1% reduction, and

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mutations that may affect its ability to be recognized by antibodies. This variant was first detected in the US at the end of January 2021.

<sup>10</sup> <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last visited February 19, 2021).

<sup>11</sup> [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-68.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-68.pdf) (last visited February 15, 2021).

<sup>12</sup> Ibid.

<sup>13</sup> <https://www.flgov.com/2020-executive-orders/> (last visited February 15, 2021).

<sup>14</sup> [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-70.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-70.pdf) (last visited February 15, 2021).

<sup>15</sup> [https://www.flgov.com/wp-content/uploads/covid19/MEDIA%20ADVISORY\\_%20Governor%20Ron%20DeSantis%20to%20Hold%20Re-Open%20Florida%20Task%20Force%20Meeting.pdf](https://www.flgov.com/wp-content/uploads/covid19/MEDIA%20ADVISORY_%20Governor%20Ron%20DeSantis%20to%20Hold%20Re-Open%20Florida%20Task%20Force%20Meeting.pdf) (last visited February 15, 2021).



- March 22 – 74.9% reduction over the same periods the previous year.<sup>16</sup>

Vacation rental bookings were also hitting year-over-year reductions of between 75.1% and 90.1% in April 2020.<sup>17</sup>

“The SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2) pandemic is the greatest threat to prosperity and well-being the US has encountered since the Great Depression.”<sup>18</sup> By the end of the first quarter of calendar year 2020, the U.S. economy declined by its fastest rate since the Great Recession.<sup>19</sup> During the second quarter (April, May and June), the U.S. economy contracted at its greatest rate in postwar history. Unprecedented shutdowns closed businesses and left millions of Americans out of work during the pandemic.<sup>20</sup>

The Federal Reserve instituted aggressive tactics in response to the turmoil in the economy, and in March, Congress passed three pieces of legislation designed to provide relief.<sup>21</sup> The federal legislation includes:

- The Coronavirus Preparedness and Response Supplemental Appropriations Act; Phase 1. This legislation provided \$8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak. [Public Law No: 116-123; enacted 03/06/2020] Florida benefitted from some of this funding for crisis response.
- The Families First Coronavirus Response Act; Phase 2. This legislation responded to the COVID-19 outbreak by providing paid sick leave, tax credits, and free COVID-19 testing; expanding food assistance and unemployment benefits; and increasing Medicaid funding. [Public Law No: 116-127; enacted 03/18/2020] Florida benefitted financially from the temporary 6.2 percentage point increase in FMAP (the federal government increased its matching rate, resulting in a lesser need for General Revenue).
- The Coronavirus Aid, Relief, and Economic Security [CARES] Act; Phase 3. This legislation provided substantial federal government support (\$2.2 trillion, the largest-economic stimulus package in U.S. history) to individuals, businesses, hospitals, and specific industries dealing with the COVID-19 pandemic and its associated economic consequences. [Public Law No: 116-136; enacted 03/27/2020] This bill provided the greatest direct budgetary relief to Florida.

In April, an interim spending bill was signed by the President, providing an additional \$484 billion for small businesses, hospitals and testing.<sup>22</sup> As of February 15, 2021, Congress was working on another spending bill related to COVID-19 relief.

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<sup>16</sup> <https://www.flgov.com/wp-content/uploads/covid19/4.21%20VISIT%20FLORIDA%20Slide%20Deck.pdf> (last visited February 15, 2021).

<sup>17</sup> Ibid.

<sup>18</sup> [https://jamanetwork.com/journals/jama/fullarticle/2771764?utm\\_source=undefined&utm\\_campaign=content-shareicons&utm\\_content=article\\_engagement&utm\\_medium=social&utm\\_term=122220](https://jamanetwork.com/journals/jama/fullarticle/2771764?utm_source=undefined&utm_campaign=content-shareicons&utm_content=article_engagement&utm_medium=social&utm_term=122220) (last visited February 15, 2021).

<sup>19</sup> *Florida: Economic Impact of Coronavirus*. Data through 11:00 a.m. on October 6, 2020. Office of Economic and Demographic Research Economic Impact. (on file with the Senate Select Committee on Pandemic Preparedness and Response).

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

## Small Businesses

Recognizing the impacts of COVID-19 on small businesses, several relief programs were enacted at the federal, state, and local level. For example, the Florida emergency bridge loan program was activated on March 17 to provide an interest-free source of capital to help small businesses.<sup>23</sup> <sup>24</sup> On March 27, Congress passed and the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which offered relief and emergency capital for small businesses, including the Paycheck Protection Program (PPP) and Economic Injury Disaster Loan (EIDL) program.<sup>25</sup>

In the months following the passage of the PPP, based upon data from the Small Business Administration and hearings before Congress, news reports disclosed problems with the dispensing of the \$660 billion loan program, and in some cases, requests for the funding to be returned.<sup>26</sup>

The PPP provides incentives for small businesses to keep their employees on the payroll. The PPP loans are fully refundable provided the firms meet specific requirements. Among the requirements is that the business must spend at least 60 percent of the loan amount on payroll costs and must maintain its pre-pandemic payroll levels through a specified time period.<sup>27</sup>

According to a Florida small business survey completed in October, 2020, more than 38,000 Florida businesses applied for assistance through one or more of the resources available to them.<sup>28</sup> According to the survey, since March, small businesses have secured more than \$158 million in federal

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<sup>23</sup> Governor Ron DeSantis activated the Florida Small Business Emergency Bridge Loan Program to support small businesses impacted by COVID-19. The short-term, interest-free loans up to \$50,000 to help bridge the gap between the time the economic impact occurred and when a business secures other financial resources. Currently, \$50 million has been allocated for the program. The application period opened March 17, 2020 and runs through May 8, 2020. <https://myemail.constantcontact.com/Special-Edition--Discussions-with-DEO.html?soid=1123910690924&aid=551XPkD3Jko> (last visited February 20, 2021).

<sup>24</sup> On April 11, 2020, the DEO reported that since March 17, it had received more than 38,000 applications for the Florida Small Business Emergency Bridge Loan. And, as of April 10<sup>th</sup>, more than 1,000 applications had been approved totaling more than \$49 million. <http://www.floridajobs.org/news-center/DEO-Press/2020/04/11/florida-department-of-economic-opportunity-awards-more-than-1-000-small-business-bridge-loans> (last visited February 15, 2021).

<sup>25</sup> *The Impact of the COVID-19 PANDEMIC on Florida's Small Businesses*, Florida Chamber Foundation, America's SBDC, Florida, and Haas Center, University of West Florida (October 2020).

<sup>26</sup> <https://www.washingtonpost.com/business/2020/09/10/ppp-fraud-charges/>;  
<https://www.washingtonpost.com/business/2020/07/06/sba-ppp-loans-data/>;  
[https://www.washingtonpost.com/business/2020/12/01/ppp-sba-data/?utm\\_campaign=wp\\_politics\\_am&utm\\_medium=email&utm\\_source=newsletter&wpisrc=nl\\_politics](https://www.washingtonpost.com/business/2020/12/01/ppp-sba-data/?utm_campaign=wp_politics_am&utm_medium=email&utm_source=newsletter&wpisrc=nl_politics) (last visited February 15, 2021).

<sup>27</sup> <https://gusto.com/company-news/employment-trends-PPP-requirements-expire> "The Covered Period is the 8 or 24-week period beginning on the PPP Loan Disbursement Date. With few exceptions, the required employment level the employer must maintain is either relative to February 15, 2019, to June 30, 2019 or (for seasonal employers) any 12-week period between May and September 2019." (last visited February 15, 2021).

<sup>28</sup> *The Impact of the COVID-19 PANDEMIC on Florida's Small Businesses*, Florida Chamber Foundation, America's SBDC, Florida, and Haas Center, University of West Florida (October 2020).

assistance.<sup>29</sup> Overall, Florida's small businesses have had varying degrees of success securing funding from one or more of the available sources.<sup>30</sup>

On March 12, 2020, the Business Damage Assessment survey was activated to assess the impact of COVID-19 on Florida's local businesses. This survey is managed by the DEO, and is intended to evaluate businesses affected by the virus and the resulting impact on the local economy.<sup>31</sup> According to information provided by DEO, with thousands of small businesses responding, while it was too early for some businesses to assess losses, the total self-projected small businesses losses in Florida at that time for the more than 13,000 businesses reporting, was estimated at more than \$4 billion.<sup>32</sup>

In Florida, restaurants have been the subject of a number of changes in policy regarding their seating capacity and ability to operate takeout and delivery, as the state grappled with controlling the spread of COVID-19. The Executive Order 2020-68, was issued on March 17, 2020.<sup>33</sup> This Order suspended bars' ability to serve alcohol for 30 days, and limited restaurants' occupancies to no more than 50% of their allowable building occupancy. Additionally, the Order required the Department of Business and Professional Regulation (DBPR) to ensure that restaurants have in place certain employee health screenings to safeguard customers from potential exposure to COVID-19.<sup>34</sup>

On March 20, 2020, Executive Order 2020-71<sup>35</sup> was issued, closing all restaurant dining areas, but allowing restaurants to continue to operate for the purpose of take-out and delivery. The Order also suspended the sale of alcohol for consumption on premise for all restaurants, but allowed the sale of to-go alcoholic beverages with food orders.<sup>36</sup> Closures of this type were reflected in the at-home buying spike of food in retail establishments in April.

In late April, a phased approach to re-opening businesses including restaurants began. On April 29, Executive Order 2020-112<sup>37</sup> was issued to provide for phased reopening. Phase One allowed food establishments to reopen at 25 percent or less capacity. A minimum of 6 feet between each table was required, and parties were limited to 10 or fewer. On May 14, Executive Order 2020-123 provided for full Phase I re-opening, which allowed restaurants to open at 50 percent capacity if certain safety guidelines were followed.<sup>38</sup> Phase Two kept restaurants at 50 percent capacity, but allowed bar-top seating with proper social distancing.<sup>39</sup>

On September 25, the Governor moved Florida into Phase Three, fully re-opening businesses by issuing Executive Order 2020-244.<sup>40</sup> The Order provides that an individual cannot be prevented from working or

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> [http://www.floridajobs.org/news-center/DEO-Press/2020/03/12/governor-desantis-activates-emergency-business-damage-assessment-survey-for-coronavirus-\(covid-19\)](http://www.floridajobs.org/news-center/DEO-Press/2020/03/12/governor-desantis-activates-emergency-business-damage-assessment-survey-for-coronavirus-(covid-19)) (last visited February 15, 2021).

<sup>32</sup> Information available from the Florida Department of Economic Opportunities.

<sup>33</sup> [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-68.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-68.pdf) (last visited February 15, 2021).

<sup>34</sup> Ibid.

<sup>35</sup> [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-71.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-71.pdf) (last visited February 15, 2021).

<sup>36</sup> Ibid.

<sup>37</sup> <https://www.flgov.com/wp-content/uploads/2020/04/EO-20-112.pdf> (last visited February 15, 2021).

<sup>38</sup> [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-123.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-123.pdf) (last visited February 15, 2021).

<sup>39</sup> [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-139.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-139.pdf) (last visited February 15, 2021).

<sup>40</sup> [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-244.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-244.pdf) (last visited February 15, 2021).

operating a business through a COVID-19 emergency ordinance, prevents local ordinances from restricting restaurants to less than 50 percent capacity, and requires an explanation for an ordinance restricting restaurants to under 100 percent capacity.<sup>41</sup>

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## COVID-19 Liability

Currently, a general limitation on liability for “[a]ny person or organization. . . who voluntarily and without compensation, other than payment or reimbursement of costs and expenses” allows the use of property “during an actual, impending, mock, or practice emergency,” is found in section 252.51 of the Florida Emergency Management Act (EMA).<sup>42</sup> The EMA provides liability protections also for “[a]ny person who gratuitously and in good faith provides temporary housing, food, water, or electricity to emergency first responders [as defined in subsection (3) of the statute] or the immediate family members of emergency first responders in response to an emergency situation related to and arising out of a public health emergency . . . or a state of emergency.”<sup>43</sup> Additionally, the Florida Good Samaritan Act provides liability protection for anyone, including healthcare providers as described in that act, if they are providing care or treatment gratuitously and during an emergency situation.<sup>44</sup> Noticeably, none of these provisions protect individuals, organizations, healthcare providers, or other businesses in the normal course of business even during an acute emergency, much less during the lengthy duration of an emergency like a pandemic. However, the statutory medical malpractice litigation requirements, including the notice before filing an action requirement and the pre-suit screening period, provides covered healthcare some liability protection from unmeritorious actions for the covered healthcare providers.<sup>45</sup>

“Business owners are concerned about the prospect of employees or customers contracting, or even allegedly contracting, the COVID-19 virus while on business premises and how that could translate into liability lawsuits that might cripple, perhaps fatally, a business’s ability to recover from the devastating economic impact of the virus.”<sup>46</sup> Other stakeholders are concerned about the risk of liability from claims based on employee, patient, or customer contraction or transmission of COVID-19 may inhibit economic recovery, and the effect this may have on tax revenues.<sup>47</sup> Opponents of such liability protections argue the fear of liability is overstated because “liability would be particularly difficult to establish, given both the relatively long incubation period of the virus and the resultant difficulty of proving that any given

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<sup>41</sup> Ibid.

<sup>42</sup> § 252.51, Fla. Stat.

<sup>43</sup> § 252.515, Fla. Stat.

<sup>44</sup> § 768.13, Fla. Stat.

<sup>45</sup> See § 766.106(2)(a), Fla. Stat. (2020), and § 766.203(2), Fla. Stat. (2020).

<sup>46</sup> Dowdell, Paul, Immunity from Liability in the Age of COVID-19: A New Reality for Trial Lawyers?, American Bar Association (August 31, 2020), available at <https://www.americanbar.org/groups/litigation/committees/trial-practice/articles/2020/immunity-from-liability-covid-19-trial-lawyers/> (last visited February 17, 2021).

<sup>47</sup> See <https://floridatxwatch.org/Press-Room/ArtMID/35144/ArticleID/18971/Florida-TaxWatch-Releases-Data-Supporting-COVID-19-Liability-Language-and-Recommendations-for-Florida%E2%80%99s-Economic-Sector-Recovery> (last visited February 17, 2021).

place of business was the source of a plaintiff's COVID-19 infection.<sup>48</sup> As of February 4, 2021, there have been approximately 159 COVID-19 related lawsuits classified as labor and employment actions, with 105 in federal courts and 54 in state courts, including class-action suits.<sup>49</sup> There currently are at least 9 healthcare related law suits in Florida.<sup>50</sup> This number is lower than the actual number of potential claims, because many of the actions in this field are still at the pre-suit notice stage of medical malpractice litigation.<sup>51</sup>

With regard to modifying existing laws related to liability within the scope of a pandemic there appear to be three general strategies:

- Liability protection for a narrow set of businesses or industries, such as healthcare providers, educational facilities, non-profit organizations, or food production,<sup>52</sup>
- Liability protection for any business,<sup>53</sup> or
- General liability protection for all individuals.<sup>54</sup>

In Florida, Senate Bill 72 and House Bill 7 are identical bills related to general COVID-19 liability protections.<sup>55</sup> Also, Senate Bill 74, which specifically addresses COVID-19-related claims against health care providers, has been introduced but does not currently have a related House bill.<sup>56</sup> These three bills are among 91 bills related to COVID-19 liability pending in 27 states.<sup>57</sup> So far, nine states and the District of Columbia have enacted a total of 22 bills related to COVID-19 liability.<sup>58</sup>

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## **Technology**

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<sup>48</sup> Dowdell, Paul, Immunity from Liability in the Age of COVID-19: A New Reality for Trial Lawyers?, American Bar Association (August 31, 2020), available at <https://www.americanbar.org/groups/litigation/committees/trial-practice/articles/2020/immunity-from-liability-covid-19-trial-lawyers/> (last visited February 12, 2021).

<sup>49</sup> <https://www.littler.com/publication-press/publication/covid-19-labor-employment-litigation-tracker> (last visited February 17, 2021).

<sup>50</sup> <https://www.huntonak.com/en/covid-19-tracker.html> (last visited February 26, 2021).

<sup>51</sup> See video of February 10, 2021, Meeting of the Senate Committee on Judiciary discussing proposed amendments to SB 74, especially the public comments between the 1:13:20 mark and the 1:20:20 mark in the video, available at [https://www.flsenate.gov/media/videoplayer?EventID=1\\_3wpkrnbb-202102100900&Redirect=true](https://www.flsenate.gov/media/videoplayer?EventID=1_3wpkrnbb-202102100900&Redirect=true) (last visited February 17, 2021).

<sup>52</sup> *COVID-19 Liability: Tort, Workplace Safety, and Securities Law*, Congressional Research Service, p. 24 especially n.232 (September 24, 2020), available at <https://crsreports.congress.gov/product/pdf/R/R46540> (last visited February 17, 2021).

<sup>53</sup> *Ibid* at n.233.

<sup>54</sup> *Ibid*.

<sup>55</sup> See <https://www.flsenate.gov/Session/Bill/2021/72>, and <https://www.flsenate.gov/Session/Bill/2021/7> (last visited February 17, 2021).

<sup>56</sup> <https://www.flsenate.gov/Session/Bill/2021/74/?Tab=RelatedBills> (last visited February 17, 2021).

<sup>57</sup> See <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx> (Select "Fiscal:Liability" under the "Topics" menu, select "All States" under the "States" menu and select "Pending" under the "Status" menu.) (last visited February 17, 2021).

<sup>58</sup> See <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx> (Select "Fiscal:Liability" under the "Topics" menu, select "All States" under the "States" menu and select "Enacted" under the "Status" menu.) (last visited February 17, 2021).

The COVID-19 pandemic has heightened awareness and increased the urgency to find solutions for some of the significant issues involving technology. The most prominent issues experienced during the pandemic are in the areas of: scalability, cybersecurity, and broadband access.

In addition to the technological issues experienced by the Department of Economic Opportunity, CONNECT system for reemployment benefits, technology issues also arose due to the extensive need for employees to work from home, and the need for Internet and computer access for youth for on-line learning, discussed more thoroughly in the Education section of this report. (See Section on [Education](#).)

COVID-19 forced government to leave behind its offices, schools to close their doors and citizens to isolate themselves at home. In doing so, the insidious disease more than underlined the digital haves and have-nots, as a large segment of the American population has had to grapple with the demands of telework, distance learning and accessing online services.<sup>59</sup>

Prior to the pandemic, the Florida Legislature had already taken important, beginning steps toward scalability of technology, and toward addressing the problem of lack of access to broadband in rural parts of the state. Effective July 1, 2020, the former Division of State Technology (DST) was dissolved, and was replaced by the Florida Digital Service (FDS) within the Department of Management Services (DMS).<sup>60</sup> This office is charged with implementing a cloud-first policy for all state agencies, intended to provide for scalability of technology.<sup>61</sup>

Cloud computing is the delivery of on-demand computing resources, including data center services, software applications, and data storage, over the Internet on a pay-for-use basis. The definition of cloud computing issued by the National Institute of Standards and Technology (NIST) in Special Publication 800-145 is the most broadly adopted definition of cloud computing. The NIST definition describes the essential characteristics of cloud computing, the types of cloud computing service models, and the types of cloud computing deployment models. (citations omitted)<sup>62</sup>

While scalability of technology is critical, this alone will not address the limitations of front-end processes such as call centers and website limitations. The following are just a few examples of the criticisms related to call centers and websites during the height of reemployment application attempts.

1. . . . According to the call center contracts, in early March, calls to the DEO had increased to 27,000 per week and DEO answered only 2% of them. The average wait time to speak with an

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<sup>59</sup> [https://www.govtech.com/network/States-Prioritized-Broadband-as-COVID-19-Took-Hold.html?utm\\_term=READ%20MORE&utm\\_campaign=GovTech%27s%20Look%20Back%20at%20a%20Challenging%20Year%20for%20Government%20IT&utm\\_content=email&utm\\_source=Act-On+Software&utm\\_medium=email](https://www.govtech.com/network/States-Prioritized-Broadband-as-COVID-19-Took-Hold.html?utm_term=READ%20MORE&utm_campaign=GovTech%27s%20Look%20Back%20at%20a%20Challenging%20Year%20for%20Government%20IT&utm_content=email&utm_source=Act-On+Software&utm_medium=email) (last visited February 16, 2021).

<sup>60</sup> <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=69715&SessionId=89> (last visited February 16, 2021).

<sup>61</sup> § 282.206(1), Fla. Stat.

<sup>62</sup> <https://www.flsenate.gov/Session/Bill/2019/5301/Analyses/h5301a.APC.PDF>, page 4. (last visited February 16, 2021).



agent was 6½ hours. In late March, the number of calls spiked to 864,313 one week. The DEO answered fewer than 1%.<sup>63</sup>

2. . . . Eyles [an unemployment benefits applicant] has been working around trying to get an application through the system. She has wakened in the middle of the night, logging into the system at 2 a.m., thinking traffic would be light, but the system still crashed. She has waited on hold at a help center number for more than two hours only to have the line go dead. ‘They just disconnect you. They just hang up on you. You don’t even get a chance,’ said Eyles. Once when she connected with a DEO staffer and was directed to a new web site. She re-started the process but then that site disappeared and it was back to the original CONNECT site where she restarted an application for a third time.<sup>64</sup>

The need for addressing front-end technology as well as scalability of applications was recognized in the Florida Government Efficiency Task Force’s 2020 draft report which recommended reviewing planned procurement and contracting opportunities that allow for agile and scalable products and services.<sup>65</sup>

In addition to these issues, many people have the added challenge of not having access to broadband at all. Fixed and mobile broadband services provide access to employment, education, entertainment, and health care opportunities, especially those in rural and remote areas of the country.<sup>66</sup>

Additionally, communities that lack broadband access can have difficulty attracting new capital investment because broadband access is critical to today’s businesses. ‘Corporate site selectors expect broadband. It is not a perk or special benefit.’ Florida’s urban areas are served at a fixed broadband coverage rate of 98 percent, but only 75.2 percent of its rural areas have coverage. This disparity between urban and rural broadband access exists because of high construction costs to build the broadband infrastructure across the large swaths of rural geographic areas and lower customer base across the low-density areas. A 2016 study determined that 16 Florida counties are underserved by fixed broadband services. (citations omitted).<sup>67</sup>

Effective July 1, 2020, the responsibility for Florida’s broadband policy implementation was moved from the Department of Management Services (DMS), to the Department of Economic Opportunity (DEO).<sup>68</sup> The bill created the Florida Office of Broadband (FOB), within the DEO’s Division of Community Development, and transferred specific duties regarding the development, marketing, and promotion of broadband in Florida.<sup>69</sup> In addition to this transfer, the legislation authorizes the Department of Transportation (DOT), beginning in FY 2022-2023, to use up to \$5 million annually from the State Transportation Trust Fund allocation to the Multi-use Corridors of Regional Economic Significance

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<sup>63</sup> <https://www.orlandosentinel.com/business/os-bz-coronavirus-deo-call-centers-20200715-jajdyzhizzgdfb7wfu7pbr3sdi-story.html> (last visited February 16, 2021).

<sup>64</sup> <https://www.tallahassee.com/story/news/politics/2020/05/02/unemployed-florida-its-mess-such-mess/3071857001/> (last visited February 16, 2021).

<sup>65</sup> [https://www.dms.myflorida.com/content/download/149892/999254/GETF\\_DraftRecs.pdf](https://www.dms.myflorida.com/content/download/149892/999254/GETF_DraftRecs.pdf) (last visited February 16, 2021).

<sup>66</sup> Senate Bill Analysis and Fiscal Impact Statement, CS/CS/SB 1166, February 21, 2020.

<https://www.flsenate.gov/Session/Bill/2020/1166/Analyses/2020s01166.ap.PDF> (last visited February 16, 2021).

<sup>67</sup> Ibid.

<sup>68</sup> Ch. 2020-26, Laws of Fla.

<sup>69</sup> Ibid.

program for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor.<sup>70</sup>

The legislation includes a finding that “the sustainable adoption of broadband Internet service is critical to the economic and business development of the state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations.”<sup>71</sup> The law defines the term “underserved” as follows:

‘Underserved’ means a geographic area of the state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 megabits per second downstream and at least 1 megabit per second upstream.<sup>72</sup>

The legislature directs the DEO as the lead state agency for the facilitation of expansion of broadband Internet services in the state, and tasks the DEO to work with private businesses.<sup>73</sup> The DEO is required to receive staffing support and other resources from, Enterprise Florida, Inc., state agencies, local governments, and community organizations.<sup>74</sup>

The FOB is required to encourage the use of broadband Internet service through grant programs that have effective strategies to facilitate deployment of broadband Internet service.<sup>75</sup> The law specifies priorities for grant awards, and includes, but is not limited to, the development of applications, programs, and services, including telework, telemedicine, and e-learning.<sup>76</sup>

The FOB is also charged with monitoring, participating in, and providing input in proceedings of the Federal Communications Commission and other federal agencies related to availability and deployment of broadband Internet services,<sup>77</sup> and the DEO is permitted to apply for and accept federal funds to carry out the requirements of the law.<sup>78</sup>

The Federal Communications Commission (FCC), “. . . regulates interstate and international communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia and U.S. territories.”<sup>79</sup> Part of the mission of the FCC is to close the digital divide and “. . . to facilitate deployment and access to affordable broadband in all areas of the country.”<sup>80</sup> As a part of this mission, the FCC provides grant opportunities. One such opportunity occurred through an auction which awarded a total of \$9.2 billion, over 10 years, to states by the FCC Rural Digital Opportunity Fund. On

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<sup>70</sup> Senate Bill Analysis and Fiscal Impact Statement, CS/CS/SB 1166, February 21, 2020.

<https://www.flsenate.gov/Session/Bill/2020/1166/Analyses/2020s01166.ap.PDF> (last visited February 16, 2021).

<sup>71</sup> Section 364.0135(1), Fla. Stat.

<sup>72</sup> Section 364.0135(2)(d), Fla. Stat.

<sup>73</sup> Section 364.0135(3), Fla. Stat.

<sup>74</sup> Section 364.0135(3), Fla. Stat.

<sup>75</sup> Section 364.0135(4)(c), Fla. Stat.

<sup>76</sup> Section 364.0135(4)(c)4., Fla. Stat.

<sup>77</sup> Section 364.0135(4)(d), Fla. Stat.

<sup>78</sup> Section 364.0135(5), Fla. Stat.

<sup>79</sup> <https://www.fcc.gov/about/overview> (last visited February 16, 2021).

<sup>80</sup> Ibid.



December 7, 2020, the FCC reported that eleven successful grant applicants from Florida were awarded a combined \$191,753,609.9 to address 11,625 locations throughout the state.<sup>81</sup>

Also, on January 4, 2021, the FCC issued a public notice requesting comment on new funding from the latest COVID-19 relief bill.<sup>82</sup> This funding provides \$7 billion to expand broadband access for students, families and unemployed workers. It includes:

- A new \$3.2 billion Emergency Broadband Benefit that will provide \$50 per month for broadband for low-income families.
- \$300 million for rural broadband.
- \$250 million for Federal Communications Commission's telehealth program.
- \$285 million to fund a pilot program to assist with broadband issues for historically Black colleges and universities.
- \$1.9 billion for "rip and replace" efforts related to Huawei and ZTE equipment in U.S. networks.
- \$1 billion in grants for tribal broadband programs.
- \$65 million to improve broadband mapping.<sup>83</sup>

Other states have already begun to grapple with how to meet their state's need for broadband.

. . . [A]s 2020 progressed, states took different steps to facilitate more broadband. Mississippi awarded \$65 million of its CARES Act money to electric cooperatives working on fiber buildouts, Indiana dedicated \$51 million to its Next Level Connections Broadband Grant Program and Delaware is using \$20 million of its CARES Act funding to address multiple digital equity concerns. Moreover, several states, including Alabama and Washington, began conducting surveys to gauge broadband levels within their borders. . . .<sup>84</sup>

Hopefully, Florida will be able to continue to participate in federal funding opportunities to expand broadband access to its citizens.

With the increased use of technology, inevitably comes an increase in cybercrimes. Cybersecurity concerns are certainly not new. With the overwhelming problems experienced with supply chains on a world-wide scale during the pandemic, focus on vulnerabilities has intensified, including concerns about cybersecurity risks in supply chains. (See Section on [Economy](#).) According to an article in *Governing* magazine, "[s]upply chains are the backbone of today's global economy, and any organization — public or private — that relies on one to accomplish its business goals is a player in supply-chain cybersecurity risk management."<sup>85</sup> The article further states that:

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<sup>81</sup> [DA-20-1422A3.pdf \(fcc.gov\)](#) (last visited February 16, 2021).

<sup>82</sup> <https://docs.fcc.gov/public/attachments/DA-21-6A1.pdf> (last visited February 16, 2021).

<sup>83</sup> <https://www.ncsl.org/ncsl-in-dc/publications-and-resources/covid-19-economic-relief-bill-stimulus.aspx> (last visited February 16, 2021).

<sup>84</sup> [https://www.govtech.com/network/States-Prioritized-Broadband-as-COVID-19-Took-Hold.html?utm\\_term=READ%20MORE&utm\\_campaign=GovTech%27s%20Look%20Back%20at%20a%20Challenging%20Year%20for%20Government%20IT&utm\\_content=email&utm\\_source=Act-On+Software&utm\\_medium=email](https://www.govtech.com/network/States-Prioritized-Broadband-as-COVID-19-Took-Hold.html?utm_term=READ%20MORE&utm_campaign=GovTech%27s%20Look%20Back%20at%20a%20Challenging%20Year%20for%20Government%20IT&utm_content=email&utm_source=Act-On+Software&utm_medium=email) (last visited February 16, 2021).

<sup>85</sup> [https://www.governing.com/security/Governments-Supply-Chain-Vulnerabilities-and-What-to-Do-About-Them.html?utm\\_term=READ%20MORE&utm\\_campaign=Local%20Jail%20Costs%20Keep%20Rising%20as%20Crim](https://www.governing.com/security/Governments-Supply-Chain-Vulnerabilities-and-What-to-Do-About-Them.html?utm_term=READ%20MORE&utm_campaign=Local%20Jail%20Costs%20Keep%20Rising%20as%20Crim)

Supply-chain cybersecurity is taking an increasingly prominent role in many organizations because divining the provenance of components and software, and the relationships between systems critical to government and business operations, is crucial to knowing how to protect those systems. ‘If an organization doesn’t understand which third parties have access to its network and present the greatest risk to its data, its digital ecosystem becomes a ticking time bomb just waiting to be exploited,’ says Fred Kneip, CEO of the security software company CyberGRX. This is especially true for government organizations where citizen privacy is at risk and in those sectors of the economy — from energy to communications to water systems — that are designated as essential critical infrastructure.<sup>86</sup>

In 2019, the Legislature passed and the Governor signed into law, HB 5301. This bill included the creation of the Florida Cybersecurity Task Force (Task Force), and directed the Task Force to review and provide recommendations for the improvement of the state’s cybersecurity infrastructure, governance, and operations. The Task Force was required to submit its’ final report of its findings and recommendations on or before November 1, 2020; the report was delivered to the Governor, President of the Senate, and Speaker of the House of Representatives on February 1, 2021.<sup>87</sup> The report recognizes:

The data that is stored and processed within the state’s technology system is critical to our economic output. An incident to one of the state’s systems has the potential to result in subsequent economic and reputational losses that far exceed expectations. Protecting these systems requires a coordinated, top-down approach that includes people, processes, and technology which should work together to promote a security culture in all functional areas of state government.<sup>88</sup>

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## **State and Local Emergency Operations**

In the case of a deadly pandemic, governments—local, state, and federal—must each protect and promote the common good and general welfare by keeping in mind “[e]ven liberty itself, the greatest of all rights, is not unrestricted license to act according to one’s own will... [but] is only freedom from restraint under conditions essential to [the] equal enjoyment of the same right by others.”<sup>89</sup>

The emergency powers of each level of government must be guided, and restricted, by this responsibility. Usually in response to a health crisis or natural disaster, the federal and state governments prioritize spending on acute treatment, with far less spending on public health services and infrastructure. Even as the state of Florida and the nation struggle to recover from COVID-19, economists suggest continuing to support spending on public health services and infrastructure, and

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<sup>86</sup> Ibid.

<sup>87</sup> *Florida Cybersecurity Task Force Final Report* (REDACTED), Florida Cybersecurity Task Force, February 1, 2021 (Copy of the redacted report on file with the Senate Select Committee on Pandemic Preparedness and Response.)

<sup>88</sup> Ibid.

<sup>89</sup> *Crowley v. Christensen*, 137 U.S. 86, 89–90 (1890).

that “investments that are made in testing, contact tracing, and isolation should be established permanently and not dismantled when the concerns about COVID-19 begin to recede.”<sup>90</sup>

In the United States, the principles of disaster management presume a leadership role by the local, state, territorial, and tribal governments (SLTT) affected by the incident.<sup>91</sup> The federal government provides coordinated, supplemental resources and assistance only if requested and approved.<sup>92</sup> Understanding that in some disasters “the needs of residents and communities will likely be greater than local resources,” and if so, the state must be capable of providing effective, coordinated, and timely support to communities and the public, the Legislature enacted the Florida Emergency Management Act (EMA),<sup>93</sup> and its precursors.<sup>94</sup>

In Florida, “[s]tate policy for responding to disasters is to support local emergency response efforts.”<sup>95</sup> Under the EMA “each political subdivision shall have the power and authority,”<sup>96</sup> among other things, to “provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency.”<sup>97</sup> Each “political subdivision” has the further power and authority to “direct and coordinate the development of emergency management plans and programs *in accordance with the policies and plans set by the federal and state emergency management agencies.*”<sup>98</sup> Even as the governor continues to maintain the responsibility to meet the dangers to the state presented by emergencies,<sup>99</sup> under the Florida Constitution and applicable statutes, decisions made by local political subdivisions within the state may not be discarded unless they conflict with the constitution or general law, or are otherwise expressly or impliedly preempted by the Legislature.<sup>100</sup>

The EMA expressly states, “Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state,”<sup>101</sup> and further provides, “the political subdivisions of the state . . . are authorized and empowered to make, amend, and rescind such orders and rules as are necessary for emergency management purposes and to supplement the carrying out of the provisions of ss. 252.31-252.90, but which are not inconsistent with any orders or rules adopted by

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<sup>90</sup> Cutler DM, Summers LH. *The COVID-19 Pandemic and the \$16 Trillion Virus*. JAMA. 2020;324(15):1495–1496. doi:10.1001/jama.2020.19759; Also available at <https://jamanetwork.com/journals/jama/fullarticle/2771764> (last visited February 16, 2021).

<sup>91</sup> *Congressional Primer on Responding to and Recovering from Major Disasters and Emergencies*, available at <https://crsreports.congress.gov/product/pdf/R/R41981> (last visited February 16, 2021).

<sup>92</sup> *Ibid.*

<sup>93</sup> § 252.311(3), Fla. Stat.

<sup>94</sup> Currently §§ 252.31-252.90, Fla. Stat.

<sup>95</sup> § 252.311(3), Fla. Stat.

<sup>96</sup> The term “political subdivision” is defined under the EMA, § 252.34(9), Fla. Stat., as “any county or municipality created pursuant to law.” The Florida Constitution provides, “The state shall be divided by law into political subdivisions called counties.” Art. VIII, § 1, Fla. Const.

<sup>97</sup> § 252.38(3)(a)1., Fla. Stat.

<sup>98</sup> § 252.38(3)(a)1., Fla. Stat. (emphasis added).

<sup>99</sup> See Governor’s Resp. in Opp’n to Pet. For Writ of Quo Warranto, 10, *William S. ABRAMSON, Petitioner, v. Hon. Ron DESANTIS, in his official capacity as Governor of Florida, Respondent*, 2020 WL 2641087 (Fla.), 14, see also § 252.36(1)(a), Fla. Stat.

<sup>100</sup> See *D’Agastino v. City of Miami*, 220 So. 3d 410, 421 (Fla. 2017) (noting “the Legislature is ultimately superior to local government under the Florida Constitution.”).

<sup>101</sup> § 252.38, Fla. Stat.

the division or by any state agency exercising a power delegated to it by the Governor or the division.”<sup>102</sup>

To this end, municipalities may be able to respond to issues and control many of the effects of a pandemic through the powers conferred on them by the Florida Constitution<sup>103</sup> and clarified by the Legislature through the Municipal Home Rule Powers Act.<sup>104</sup> Any of these ‘Municipal Home Rule’ powers, exercised through the legislative body of the municipality, may be exercised “for municipal purposes except as otherwise provided by law.”<sup>105</sup> However, these powers may not be exercised regarding “[a]ny subject expressly preempted by the constitution or by general law,” or regarding “[a]ny subject preempted to a county pursuant to a county charter adopted under” the constitution.”<sup>106</sup> Further, ‘Municipal Home Rule’ powers may be preempted by the Legislature through implied preemption.<sup>107</sup>

At the county level, ‘charter counties,’ counties operating under county charters adopted pursuant to Article VIII of the Florida Constitution, “have the broad authority to ‘enact county ordinances not inconsistent with general law.’”<sup>108</sup> “According to several Florida constitutional scholars, the establishment of charter government was designed to remove the resolution of local problems from the state legislature’s busy agenda and to grant the county electorate greater control over their regional affairs.”<sup>109</sup> Even non-charter counties possess the “power of self-government as is provided by general or special law.”<sup>110</sup> The salient difference between charter and non-charter counties is that non-charter counties’ powers are “provided by general or special law,” whereas charter counties’ powers are all powers of self-government “not inconsistent with general law.”<sup>111</sup>

The actions of charter and non-charter counties are subject to express and implied preemption, “because the Legislature is ultimately superior to local government under the Florida Constitution.”<sup>112</sup> In section 125.01(3)(b), Florida Statutes, the Legislature recognized the importance of the counties’ home rule authority by providing, “[t]he provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution.”<sup>113</sup> The Legislature may specifically preempt or restrict certain municipal or county powers, but the more directly expressed the better these restrictions will be.

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<sup>102</sup> § 252.46(1), Fla. Stat.

<sup>103</sup> Art. VIII, § 2(b), Fla. Const.

<sup>104</sup> § 166.021, Fla. Stat.

<sup>105</sup> Art. VIII, § 2(b), Fla. Const. (The phrase ‘except as otherwise provided by law’ “establishes the constitutional superiority of the Legislature’s power over municipal power. *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So. 3d 924, 928 (Fla. 2013)).

<sup>106</sup> § 166.021(3)(c) and (d), Fla. Stat.

<sup>107</sup> *D’Agastino v. City of Miami*, 220 So. 3d 410, 420-1 (Fla. 2017).

<sup>108</sup> *Miami-Dade Cty. v. Miami Gardens Square One, Inc.*, No. 3D20-1512, 2020 WL 6472542, at \*5 (Fla. Dist. Ct. App. Nov. 4, 2020).

<sup>109</sup> <https://www.fl-counties.com/charter-county-information> (last visited February 16, 2021).

<sup>110</sup> Art. VIII, § 1(f), Fla. Const.; These powers are generally found in § 125.01, Fla. Stat.

<sup>111</sup> Compare Art. VIII, § 1(f), Fla. Const., with Art. VIII, § 1(g), Fla. Const.

<sup>112</sup> See *D’Agastino v. City of Miami*, 220 So. 3d 410, 421 (Fla. 2017).

<sup>113</sup> § 125.01(3)(b), Fla. Stat.

In addition to establishing that each level of government has its role and responsibility in responding to an emergency, the EMA provides the broad scope of circumstances that may constitute an emergency. In 1993 the Legislature clarified the types of emergencies covered under the EMA, adding and defining the terms “disaster,” “catastrophic disaster,” “major disaster,” and “minor disaster.”<sup>114</sup> Additionally in 1993, the Legislature defined the terms “manmade emergency,” “natural emergency,” and “technological emergency.”<sup>115</sup> A “natural emergency” was defined as “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,” which remains the definition until this day.<sup>116</sup>

Article IV, section 1 of the Florida Constitution vests the “supreme executive power” in the governor, who must “take care that the laws [are] faithfully executed.”<sup>117</sup> The governor is also “responsible for meeting the dangers presented to this state and its people by emergencies.”<sup>118</sup> In meeting those dangers, the Governor may “issue executive orders, proclamations, and rules” which “have the force and effect of law.”<sup>119</sup> While Article IV, section 1 does not expressly include any reference to specific *emergency* powers, it is the foundation for executive emergency authority in the state of Florida through the faithful execution of other laws.<sup>120</sup> The EMA is the legislative expression of this emergency authority.<sup>121</sup>

If an emergency has occurred or is imminent, it is the governor’s responsibility to declare a state of emergency by issuing an executive order or proclamation.<sup>122</sup> When the governor declares a state of emergency, the state implements the plans and activities “required to mitigate, respond to, or recover from an emergency or disaster.”<sup>123</sup> The governor is empowered to “[s]uspend 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 with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency.”<sup>124</sup> Additionally, the governor has the discretion to use various additional emergency powers enumerated under section 252.36(5), Florida Statutes.<sup>125</sup> It is in the governor’s discretion when to use or delegate these powers.<sup>126</sup> The

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<sup>114</sup> Ch. 93-211, § 10, Laws of Fla. (amending § 252.34, Fla. Stat. (1993)).

<sup>115</sup> *Ibid.*

<sup>116</sup> Compare Ch. 93-211, § 10, Laws of Fla. and § 252.34(7), Fla. Stat. (1993), with § 252.34(7), Fla. Stat.

<sup>117</sup> *DeSantis v. Fla. Educ. Ass’n*, No. 1D20-2470, 2020 WL 5988207, at \*9 (Fla. Dist. Ct. App. Oct. 9, 2020) (citing Art. IV, § 1 (a), Fla. Const.).

<sup>118</sup> *DeSantis v. Fla. Educ. Ass’n*, No. 1D20-2470, 2020 WL 5988207, at \*9 (Fla. Dist. Ct. App. Oct. 9, 2020) (citing § 252.36(1)(a), Fla. Stat.).

<sup>119</sup> *DeSantis v. Fla. Educ. Ass’n*, No. 1D20-2470, 2020 WL 5988207, at \*9 (Fla. Dist. Ct. App. Oct. 9, 2020) (citing § 252.36(1)(b), Fla. Stat.).

<sup>120</sup> See *Abramson v. DeSantis*, No. SC20-646, 2020 WL 3464376, at \*1 (Fla. June 25, 2020).

<sup>121</sup> See § 252.311, Fla. Stat.

<sup>122</sup> § 252.36(2), Fla. Stat.

<sup>123</sup> Governor’s Resp. in Opp’n to Pet. For Writ of Quo Warranto, 10, *William S. ABRAMSON, Petitioner, v. Hon. Ron DESANTIS, in his official capacity as Governor of Florida, Respondent*, 2020 WL 2641087 (Fla.), 14, (citing § 252.34(1), Fla. Stat.).

<sup>124</sup> § 252.36(5)(a), Fla. Stat. (emphasis added).

<sup>125</sup> See Governor’s Resp. in Opp’n to Pet. For Writ of Quo Warranto, 10, *William S. ABRAMSON, Petitioner, v. Hon. Ron DESANTIS, in his official capacity as Governor of Florida, Respondent*, 2020 WL 2641087 (Fla.), 14.

<sup>126</sup> § 252.36(4)-(10), Fla. Stat.

governor's authority to delegate these powers during an emergency is based on section 252.36(1)(a), Florida Statutes.

While the governor is the lynchpin of the EMA, during the current pandemic, he has relied upon delegations of authority to respond expeditiously and efficiently to emergencies. In response to the pandemic, the Governor and several agency heads, including Cabinet Officers, under the Governor's delegation of power, issued a number of waivers of laws, rules, and policies in various forms including Executive Orders, Directives, Emergency Rules, and Guidance. As the Florida Supreme Court has observed:

Emergencies do not create power or authority; but emergencies may afford occasions for the exercise of powers already existing. This principle of law is peculiarly applicable to Executive powers and authority to meet great public emergencies and to conserve governmental efficiency and the welfare of the State. Implied power when not forbidden is as potent as power expressly conferred.<sup>127</sup>

The myriad of orders, in various forms, raises the issue of whether legislative guidance is needed for the best way to enact and manage these significant changes during an extended emergency such as a pandemic. Whatever method is used to waive laws, rules, or policies issued via the governor's delegation of authority should not diminish the governor's ultimate responsibility for any executive order or directive issued by state agencies.

The State Comprehensive Emergency Management Plan (CEMP) ensures all levels of government are able to function under a unified emergency organization to safeguard the well-being of Florida's residents and visitors. The State CEMP provides for integration of state response operations with the federal agencies responding to emergency situations in Florida at the request of the Governor. This plan also recognizes the federal regional planning efforts which utilize the Integrated Planning System.

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## **Continuity of Operations Plans (COOP)**

Pursuant to section 252.365(3), Florida Statutes, each executive department and other specified entities are required to designate an emergency coordination officer who is responsible for ensuring the entities have a disaster preparedness plan.<sup>128</sup> These disaster preparedness plans are also known as continuity of operations plans (COOPs). Each COOP must "outline a comprehensive and effective program to ensure continuity of essential state functions under all circumstances,"<sup>129</sup> including pandemics. Each COOP must also include the following basic 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;

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<sup>127</sup> *In re Advisory Opinion to the Governor*, 9 So. 2d 172, 176 (1942).

<sup>128</sup> § 252.365(3)(a), Fla. Stat.

<sup>129</sup> *Ibid.*

and schedules and procedures for periodic tests, training, and exercises.<sup>130</sup>

Even many private for profit and not-for-profit entities have adopted COOPs as a best practice. Because physical distancing and other mitigating steps taken during a pandemic may disrupt normal operations for an extended period of time, it is imperative that each state entity and local government entity have a COOP. The referenced statute may need to be revised to require the COOPs to address the emergency interruption of operations for extended periods of time, including but not limited to front-end processes that need to be able to accommodate rapidly increasing and very high numbers of citizens needing access to government services and benefits.

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## **Federal Emergency Authority and Responsibility**

Some disasters can be managed completely with local and state resources or through mutual aid agreements with other local governments. If a disaster is larger or more complex, the state government may need to supplement a local government's resources.<sup>131</sup> If local and state government resources are overwhelmed, and the governor of the state requests assistance, the federal government may begin to provide additional help.<sup>132</sup>

Prior to September 30, 1950, Congress funded disaster recovery on an incident-by-incident basis. The inefficiency and inconsistencies of passing an individual law every time a community was in distress prompted Congress to enact the Federal Disaster Relief Program. . . . The Federal Disaster Relief Program of 1950 only authorized the Federal government to assist local and State governments in disaster *response* efforts. . . . Congress passed the Disaster Relief Act of 1966 to update existing legislation and expand Federal assistance into the *recovery* arena.<sup>133</sup>

During the current pandemic, the local, state, and federal governments have discovered that response to and recovery from a pandemic requires preparation well in advance of the onset of the emergency.

Currently, the broadest and most powerful tool in the federal government is the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act).<sup>134</sup> Originally signed into law on November 23, 1988, the Stafford Act amended the Disaster Relief Act of 1974.<sup>135</sup> "A presidential declaration of emergency or major disaster under the authority of the Stafford Act must, in almost all cases, be requested by the governor of an affected state."<sup>136</sup> The governor's request must be "based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary."<sup>137</sup>

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<sup>130</sup> § 252.365(3)(b), Fla. Stat.

<sup>131</sup> See § 252.31-252.60, Fla. Stat.

<sup>132</sup> <https://crsreports.congress.gov/product/pdf/R/R41981> (last visited February 16, 2021).

<sup>133</sup> Anna Marie Baca, History of Disaster Legislation, FEMA, Sept. 2008, at 1, <https://www.fema.gov/pdf/dae/200809.pdf> (last visited February 16, 2021).

<sup>134</sup> 42 U.S.C. § 5121-5207 (Pub.L. 93-288, Title I, § 101, May 22, 1974; Pub.L. 100-707, Title I, § 103(a), Nov. 23, 1988).

<sup>135</sup> See <https://www.fema.gov/disasters/stafford-act> (last visited February 16, 2021).

<sup>136</sup> 42 U.S.C. § 5170; see also <https://crsreports.congress.gov/product/pdf/R/R41981> (last visited February 16, 2021).

<sup>137</sup> 42 U.S.C. § 5170(a).



Under the authority of the Stafford Act the President is empowered to respond to a state's request for assistance by "provid[ing] an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters."<sup>138</sup> "The two critical decisions that are at the core of the process are: (i) the governor's decision to request assistance from the president; and (ii) the president's decision to grant or decline the request."<sup>139</sup>

A review of the Stafford Act, and related legislation and regulations, shows that its terms were drafted and continue to most directly address short-term, weather-or environment-related disasters such as hurricanes, earthquakes, and wildfires. While Stafford Act funding has been the bedrock of federal assistance to states during this pandemic, the existing federal direction on the roles and responsibilities of federal agencies responding to domestic incidents that was in place prior to the COVID-19 outbreak reflected parallel and overlapping authorities between the Federal Emergency Management Agency (FEMA) and the Department of Health and Human Services (HHS).<sup>140</sup> Pursuant to federal Executive Order 12673,<sup>141</sup> FEMA has been delegated the authority to lead the administration of disaster relief and emergency assistance functions after a disaster declaration under the Stafford Act.<sup>142</sup> However, the Public Health Service Act<sup>143</sup> gives HHS the authority to lead the federal public health and medical response during a public health emergency (PHE).

On January 31, 2020, the Secretary of HHS declared a public health emergency under section 319 of the Public Health Service Act.<sup>144</sup> A PHE declaration provides the secretary of HHS the authority to enable extensive discretionary actions necessary to manage the public health threat.<sup>145</sup> These parallel and overlapping authorities require a shared understanding of how agencies will coordinate with one

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<sup>138</sup> 42 U.S.C. § 5121(b).

<sup>139</sup> R. Steven Daniels, *The Rise of Politics and the Decline of Vulnerability as Criteria in Disaster Decisions of the United States, 1953-2009*, 37 *Disasters* 669, 670 (2013).  
[https://www.researchgate.net/publication/256450846\\_The\\_rise\\_of\\_politics\\_and\\_the\\_decline\\_of\\_vulnerability\\_as\\_criteria\\_in\\_disaster\\_decisions\\_of\\_the\\_United\\_States\\_1953-2009](https://www.researchgate.net/publication/256450846_The_rise_of_politics_and_the_decline_of_vulnerability_as_criteria_in_disaster_decisions_of_the_United_States_1953-2009) (last visited February 16, 2021).

<sup>140</sup> *Pandemic Response to Coronavirus Disease 2019 (COVID-19): Initial Assessment Report*, FEMA Operations January through September 2020, page 31(January 2021), available at  
[https://www.fema.gov/sites/default/files/documents/fema\\_covid-19-initial-assessment-report\\_2021.pdf](https://www.fema.gov/sites/default/files/documents/fema_covid-19-initial-assessment-report_2021.pdf) (last visited February 20, 2021).

<sup>141</sup> E.O. 12673, Delegation of Disaster Relief and Emergency Assistance Functions, Mar. 23, 1989, available at  
<https://www.presidency.ucsb.edu/documents/executive-order-12673-delegation-disaster-relief-and-emergency-assistance-functions> (last visited February 16, 2021).

<sup>142</sup> 42 U.S.C. 5121-5207.

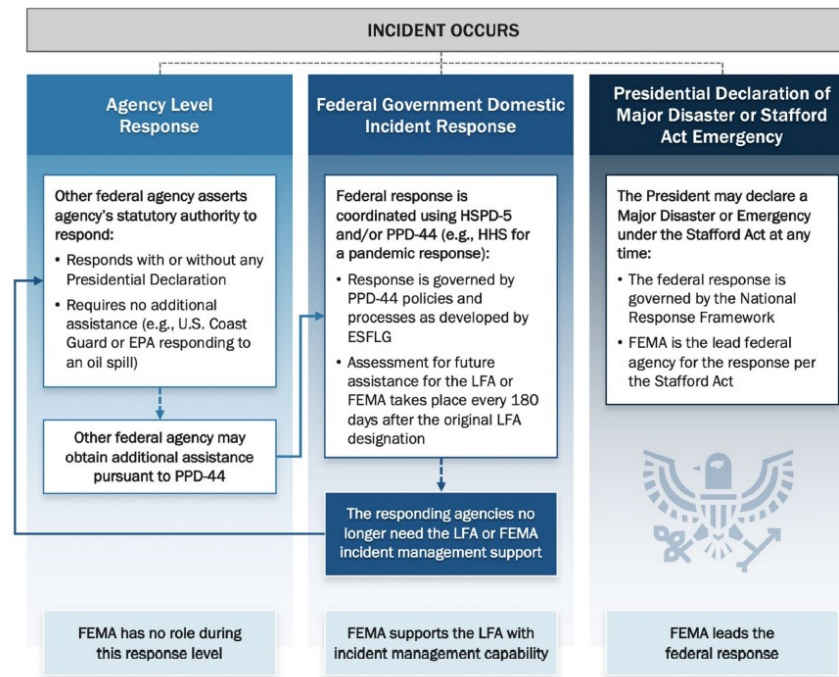
<sup>143</sup> 42 U.S.C. § 247d (Pub. L. No. 104-321, Oct. 19, 1996).

<sup>144</sup> See Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337; the text of the declaration is available at  
<https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx> (last visited February 16, 2021).

<sup>145</sup> *Pandemic Response to Coronavirus Disease 2019 (COVID-19): Initial Assessment Report*, FEMA Operations January through September 2020, page 31(January 2021), available at  
[https://www.fema.gov/sites/default/files/documents/fema\\_covid-19-initial-assessment-report\\_2021.pdf](https://www.fema.gov/sites/default/files/documents/fema_covid-19-initial-assessment-report_2021.pdf) (citing U.S. Department of Health and Human Services, "Public Health Emergency Declaration, Assistant Secretary for Preparedness and Response (ASPR)", Nov. 26, 2019, available at  
<https://www.phe.gov/Preparedness/legal/Pages/phedeclaration.aspx>) (last visited February 20, 2021).



another in a response.<sup>146</sup> The statutory authorities and federal planning that was controlling at the outset of the pandemic directed that HHS, rather than FEMA, take the lead in the response.<sup>147</sup> In early 2020, Presidential Policy Directive 44 stipulated that the lead federal agency direct the federal response prior to a national disaster declaration, and the then-effective 2018 Pandemic Crisis Action Plan identified HHS, not FEMA, as the lead federal agency.<sup>148</sup> See *Figure below*.



**Federal Incident Management Tree<sup>149</sup>**

The concurrent segregation and overlap of authority led to confusion during the COVID-19 pandemic that was both a declared disaster and a declared public health emergency. The January 31 2020 public health emergency directed HHS and the Centers for Disease Control to work with state, tribal and local, governments in response to the public health emergency.<sup>150</sup>

The emergency declaration gives state, tribal, and local health departments more flexibility to request that HHS authorize them to temporarily reassign state, local, and tribal personnel to respond to 2019-nCoV if their salaries normally are funded in whole or in part by Public Health

<sup>146</sup> *Pandemic Response to Coronavirus Disease 2019 (COVID-19): Initial Assessment Report*, FEMA Operations January through September 2020, page 31(January 2021), available at [https://www.fema.gov/sites/default/files/documents/fema\\_covid-19-initial-assessment-report\\_2021.pdf](https://www.fema.gov/sites/default/files/documents/fema_covid-19-initial-assessment-report_2021.pdf) (last visited February 20, 2021).

<sup>147</sup> Ibid.

<sup>148</sup> See *ibid*.

<sup>149</sup> Ibid.

<sup>150</sup> <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html> (last visited February 16, 2021).

Service Act programs. These personnel could assist with public health information campaigns and other response activities.

The Centers for Disease Control and Prevention is working closely with state health departments on disease surveillance, contact tracing, and providing interim guidance for clinicians on identifying and treating coronavirus infections<sup>151</sup>

While initial planning envisioned HHS as the lead agency, on March 19, 2020, the Federal Emergency Management Agency (FEMA) “assumes the lead for the federal response to COVID-19” as a whole-of-government response to the pandemic, following instruction from the President and Vice President.<sup>152</sup> This included transferring the operation task forces the HHS had established.<sup>153</sup> This was the first time in history that FEMA “had implemented an interagency Unified Coordination Group (UCG).”<sup>154</sup> Neither the 2018 Pandemic Crisis Action Plan, nor FEMA regional pandemic plans propose that FEMA would take the status as lead agency for a national whole-of-government response.<sup>155</sup> This change created significant confusion, hampering the federal response for some time.

On March 13, 2020, the President declared a national emergency recognizing the threat that SARS-CoV-2 posed to the Nation’s healthcare systems, and he also determined that the COVID-19 outbreak constituted an emergency, of nationwide scope, pursuant to section 501(b) of the Stafford Act (42 U.S.C. 5191(b)).<sup>156</sup> In response to Governor DeSantis’s request, the President issued a memorandum providing “maximum support” to the State of Florida, among other states, including funding “100 percent of the emergency assistance activities associated with preventing, mitigating, and responding to the threat to public health and safety posed by the virus that these States and territories undertake using their National Guard forces.”<sup>157</sup> The 100 percent cost share terminated 30 days after the date of the

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<sup>151</sup> Ibid.

<sup>152</sup> *Pandemic Response to Coronavirus Disease 2019 (COVID-19): Initial Assessment Report*, FEMA Operations January through September 2020, page 5 (January 2021), available at [https://www.fema.gov/sites/default/files/documents/fema\\_covid-19-initial-assessment-report\\_2021.pdf](https://www.fema.gov/sites/default/files/documents/fema_covid-19-initial-assessment-report_2021.pdf) (last visited February 26, 2021).

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

“The 2018 Pandemic Crisis Action Plan (PanCAP) did not envision FEMA as the agency leading federal response for a whole-of government response under the Stafford Act, or its role in managing health and medical supplies and equipment for SLTT partners nationally. FEMA regional pandemic plans either did not exist or did not account for jurisdiction-specific capabilities or deficiencies. Existing pandemic plans identify information requirements for decision-making; however, they lack the specificity and guidance to establish data collection and reporting mechanisms for effective decision-making for a national event.

<sup>156</sup> Providing Federal Support for Governors’ Use of the National Guard To Respond to COVID-19, 85 FR 18409, section 1, available at <https://www.federalregister.gov/documents/2020/04/01/2020-06987/providing-federal-support-for-governors-use-of-the-national-guard-to-respond-to-covid-19> (last visited February 16, 2021).

<sup>157</sup> Providing Federal Support for Governors’ Use of the National Guard To Respond to COVID-19, 85 FR 18409, section 2, available at <https://www.federalregister.gov/documents/2020/04/01/2020-06987/providing-federal-support-for-governors-use-of-the-national-guard-to-respond-to-covid-19> (last visited February 16, 2021).

memorandum,<sup>158</sup> but was extended through December 31, 2020, by subsequent memoranda.<sup>159</sup> On December 3, 2020, former President Trump issued a memorandum that included a cost share funding for “75 percent of the emergency assistance activities associated with preventing, mitigating, and responding to the threat to public health and safety posed by the virus that these States and territories undertake using their National Guard forces,” applicable to orders authorizing duty through March 31, 2021.<sup>160</sup>

On February 2, 2021, President Biden restored the 100 percent cost share by directing FEMA to reimburse states for 100 percent of their costs for eligible emergency protective measures retroactive to January 2020, and effective until September 30, 2021.<sup>161</sup> This directive also expanded the eligibility for reimbursement for activities conducted after January 21, 2021, also effective until September 30, 2021.<sup>162</sup>

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## **Legislative Emergency Authority and Responsibility**<sup>163</sup>

Throughout any declared emergency, the legislative power of the state remains solely with the Legislature.<sup>164</sup> The Governor’s constitutional executive power and authority and responsibilities in an

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<sup>158</sup> Providing Federal Support for Governors’ Use of the National Guard To Respond to COVID-19, 85 FR 18409, section 4, available at <https://www.federalregister.gov/documents/2020/04/01/2020-06987/providing-federal-support-for-governors-use-of-the-national-guard-to-respond-to-covid-19> (last visited February 16, 2021).

<sup>159</sup> Providing Federal Support for Governors’ Use of the National Guard To Respond to COVID-19, 85 FR 47889, 2020, section 2, available at <https://www.federalregister.gov/documents/2020/04/01/2020-06987/providing-federal-support-for-governors-use-of-the-national-guard-to-respond-to-covid-19> (last visited February 16, 2021).

<sup>160</sup> Extension of Governors’ Use of the National Guard To Respond to COVID-19 and To Facilitate Economic Recovery, 85 FR 78945, 2020, sections 3 and 4. available at <https://www.federalregister.gov/documents/2020/12/08/2020-27068/extension-of-governors-use-of-the-national-guard-to-respond-to-covid-19-and-to-facilitate-economic> (last visited February 16, 2021).

<sup>161</sup> FEMA Advisory, *FEMA’s Role in COVID-19 Vaccine Distribution* (February 8, 2021) available at <https://www.in.gov/dhs/files/FEMA-Advisory-FEMA-Role-COVID-19-Vaccine-Distribution-02082021.pdf> (last visited February 16, 2021); and *FACT SHEET: President Biden Announces Increased Vaccine Supply, Initial Launch of the Federal Retail Pharmacy Program, and Expansion of FEMA Reimbursement to States*, The White House (February 2, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/02/fact-sheet-president-biden-announces-increased-vaccine-supply-initial-launch-of-the-federal-retail-pharmacy-program-and-expansion-of-fema-reimbursement-to-states/> (last visited February 16, 2021).

<sup>162</sup> FEMA Advisory, *FEMA’s Role in COVID-19 Vaccine Distribution* (February 8, 2021) available at <https://www.in.gov/dhs/files/FEMA-Advisory-FEMA-Role-COVID-19-Vaccine-Distribution-02082021.pdf> (last visited February 16, 2021).

<sup>163</sup> The Florida Senate has acted decisively to respond to and mitigate the threat COVID-19 poses to its members and staff through its comprehensive *Senate COVID-19 Protocols* (Updated 1.26.21), available at <https://www.flsenate.gov/PublishedContent/Home/FrontPage/PopularLinks/Links/COVID-19Protocols.pdf> (last visited February 16, 2021). These protocols address and implement the personal and organizational mitigation measures discussed throughout this report, including routine testing, a mask requirement, encouraging virtual meetings, and restricting visitors.

<sup>164</sup> Fla. Const. art. II, § 3, and Fla. Const. art. III, §1.

emergency do not permit him or her to accept or usurp this legislative power.<sup>165</sup> "Executive powers do not extend past federal or state constitutional limits [even] during a state of emergency."<sup>166</sup>

The Legislature defines the scope of governors' emergency powers by statute.<sup>167</sup> Beyond its general legislative power, the Legislature currently has at least one direct check on the Governor's exercise of authority through the EMA provision that states "[t]he Legislature by concurrent resolution may terminate a state of emergency at any time."<sup>168</sup> If the Legislature invokes this provision, the Governor is required to "issue an executive order or proclamation ending the state of emergency."<sup>169</sup> While this provision appears to never have been used with regard to the usual natural disasters such as hurricanes or fires, because a pandemic may last for an extended period of time, the question arises regarding whether what amounts to a veto power by the Legislature, is sufficient or the most appropriate Legislative involvement during a lengthy emergency such as a pandemic. All of the legislative power of the state is vested in the Legislature.<sup>170</sup> Considering the unprecedented situation the state is facing due to the pandemic, the Legislature may want to consider whether or not statutory changes are needed—in response to this pandemic or to better equip future legislatures to respond to pandemics or other lengthy emergencies.

The deliberative decision-making of a legislative body is designed for policy-making and not as much for a rapid response situation.<sup>171</sup> The extended and state-wide nature of pandemics, as compared to weather-related emergencies, may necessitate a more active engagement by the Legislature through revisions and/or additions to the applicable statutes. For example, when a pandemic exists for an extended amount of time, legislative power may need to be exercised to ensure the constitutionality of the state's actions in response to and in mitigation of a pandemic.

Many states are revisiting emergency operations laws due primarily to the length and magnitude of the current pandemic.<sup>172</sup> Some states have provisions that ensure their legislatures are involved in any policy-making decisions that arise during, and even in declaring, an emergency.<sup>173</sup> Some of these provisions alter the maximum duration of an emergency declaration before an extension is required, require notice to legislatures or legislative leaders when issuing orders, such as specific statutes and regulations that will be suspended or altered, or require prior notice to or approval by legislatures or

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<sup>165</sup> Fla. Const. art. II, § 3, and Fla. Const. art. III, §1.

<sup>166</sup> Birdsong, Nicholas, *Balancing Legislative and Executive Powers in Emergencies*, Legisbrief, Vol . 28, No. 25 (July 2020). available at <https://www.ncsl.org/research/about-state-legislatures/balancing-legislative-and-executive-powers-in-emergencies.aspx> (last visited February 16, 2021).

<sup>167</sup> Ibid.

<sup>168</sup> § 252.36(2), Fla. Stat.

<sup>169</sup> Ibid.

<sup>170</sup> Fla. Const. art. III, §1.

<sup>171</sup> Greenblatt, Alan, *Political Power Plays: Tension Between the Legislative and Executive Branches Escalates*, State Legislatures Magazine (Jan. 12, 2021) (*quoting* Justin Phillips, a political scientist at Columbia University), available at <https://www.ncsl.org/bookstore/state-legislatures-magazine/tension-between-legislative-and-executive-branches-escalates-magazine2021.aspx?ct=t> (last visited February 16, 2021).

<sup>172</sup> See *State Action on Coronavirus (COVID-19)*, National Conference of State Legislatures, <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx> (last visited February 16, 2021).

<sup>173</sup> *Legislative Oversight of Emergency Executive Powers*, National Conference of State Legislatures, available at <https://www.ncsl.org/research/about-state-legislatures/legislative-oversight-of-executive-orders.aspx> (last visited February 16, 2021).

legislative leaders prior to spending or transfer of funds.<sup>174</sup> In New York, by a concurrent resolution the legislature at any time may terminate any executive order issued under the emergency powers section.<sup>175</sup> In Alaska, “[a]proclamation of disaster emergency may not remain in effect longer than 30 days unless extended by the legislature by a concurrent resolution.”<sup>176</sup> Vermont disperses the oversight to the local level by providing, if the legislative body of a municipality affected by a natural disaster sends notice to the governor that it no longer desires that the state of emergency continue within its municipality, the governor must declare the state of emergency terminated within that particular municipality.<sup>177</sup>

While the Legislature can call a special session if needed, the legislature may want to consider whether current law is sufficient to address issues related to an extended emergency, such as during a devastating economic downturn, and billions of federal dollars flowing to the state. The Legislature’s decisions may include exercising the legislative authority in appropriating the expenditure of federal money appropriated by Congress, if such appropriation can be accomplished without “prevent[ing], hinder[ing], or delay[ing] necessary action in coping with the emergency.”<sup>178</sup> This pandemic has highlighted statutory provisions that may need legislative action to modernize them or to make them easier to interpret with regard to an emergency like a pandemic. Further, in an extended pandemic some decisions may transform from exigent, emergency decisions, appropriately addressed by executive emergency authority, to farther-reaching decisions more appropriate for legislative action. The Florida Statutes may need to reflect this potential situation, and clearly identify the parameters of such a situation. In recognizing it as “the controlling Supreme Court precedent that squarely governs judicial review of rights-challenges to emergency public health measures” the U.S. Court of Appeals, Fifth Circuit stated that “*Jacobson*”<sup>179</sup> instructs that *all* constitutional rights may be reasonably restricted to combat a public health emergency.”<sup>180</sup>

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## **Judicial Emergency Authority and Responsibility**

The judicial branch has the sole authority to exercise the judicial powers of state government.<sup>181</sup> The chief justice of the Florida Supreme Court is “the chief administrative officer of the judicial system.”<sup>182</sup> The chief justice is “responsible for the dispatch of the business of the branch and of the court and direct the implementation of policies and priorities as determined by the supreme court for the operation of the branch and of the court.”<sup>183</sup>

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<sup>174</sup> Ibid.

<sup>175</sup> N.Y. Exec. Law § 29-a (McKinney).

<sup>176</sup> Alaska Stat. Ann. § 26.23.020 (Under an emergency proclamation Alaska’s governor’s “orders, proclamations, and regulations have the force of law” similar to the Governor’s powers under the Florida EMA.).

<sup>177</sup> Vt. Stat. Ann. tit. 20, § 13.

<sup>178</sup> Compare § 216.212(3), Fla. Stat., with § 252.36(5)(a), Fla. Stat.

<sup>179</sup> *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905).

<sup>180</sup> *In re Abbott*, 954 F.3d 772, 786 (5th Cir. 2020) (emphasis in original).

<sup>181</sup> Fla. Const. art. II, § 3.

<sup>182</sup> Fla. Const. art. V, § 2(b).

<sup>183</sup> Fla. R. Jud. Admin., Rule 2.205(2)(B).

Pursuant to these administrative powers and duties Chief Justice Charles T. Canady “issued several administrative orders implementing temporary measures essential to the administration of justice during the COVID-19 pandemic.”<sup>184</sup>

The first judicial administrative order addressing the pandemic was Fla. Admin. Order No. AOSC20-12, issued on March 11, 2020. AOSC-20-12 directed chief judges of the district and circuit courts to continue planning and to take measures necessary to respond to and mitigate the COVID-19 pandemic.<sup>185</sup>

The Chief Justice followed this order with at least 24 others, not including amendments to the orders, regarding issues from speedy trial deadlines in traffic cases, to court language interpreters, to continuing judicial education, to other various elements of the judicial branch.<sup>186</sup> The administrative orders with the broadest effects on the judicial branch, and the citizens and businesses of the state of Florida, addressed issues of closure of court buildings, suspension of in-person court proceedings, and promotion of procedures to facilitate remote electronic proceedings.<sup>187</sup> The initial closures and suspensions lasted only 14-20 days, but as the pandemic expanded, the closures were modified to allow courts to continue to perform essential functions and as many other functions as safely possible.<sup>188</sup>

On April 6, 2020, the Chief Justice issued Fla. Admin. Order No. AOSC20-23, a comprehensive order to “extend[], refine[], and strengthen[] previously enacted temporary remedial measures,” and to address each of the following areas: guiding principles, use of technology, court proceedings, suspension of certain rules of criminal procedure, defendants arrested on capias from another Florida jurisdiction, speedy trial procedure in noncriminal traffic infraction court proceedings, writs of possession, family law forms, and visitation for children under the protective supervision of the Florida Department of Children

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<sup>184</sup> See e.g. Amend’t 8 to *In re: Comprehensive COVID-19 Emergency Measures for the Florida State Courts*, Fla. Admin. Order No. AOSC20-23 (November 23, 2020), available at <https://www.floridasupremecourt.org/Emergency> (last visited February 20, 2021).

<sup>185</sup> Florida Supreme Court Administrative Order AOSC20-12 (April 21, 2020), *citing* Florida State Courts Strategy for Pandemic Influenza and Other Infectious Disease Outbreaks, *Keeping the Courts Open in a Pandemic* (March 2006, Rev. February 27, 2020), available at [www.flcourts.org/content/download/608358/file/strategy-for-pandemic-influenza-2020.pdf](http://www.flcourts.org/content/download/608358/file/strategy-for-pandemic-influenza-2020.pdf) (last visited February 20, 2021).

<sup>186</sup> See e.g. *In re: COVID-19 Emergency Procedures for Speedy Trial in Noncriminal Traffic Infraction Court Proceedings*, Fla. Admin. Order No. AOSC20-19 (March 30, 2020); *In re: COVID-19 Emergency Procedures in Relation to Spoken Language Court Interpreter Regulation*, Fla. Admin. Order No. AOSC20-20 (March 31, 2020); and *In re: Extension of Continuing Judicial Education Reporting Deadlines*, Fla. Admin. Order No. AOSC20-21 (March 31, 2020). All available at <https://www.floridasupremecourt.org/Emergency> (last visited February 20, 2021).

<sup>187</sup> *In re: COVID-19 Emergency Procedures in the Florida State Courts*, Fla. Admin. Order No. AOSC20-13 (March 13, 2020), available at <https://www.floridasupremecourt.org/Emergency> (last visited February 20, 2021).

<sup>188</sup> *In re: COVID-19 Essential and Critical Trial Court Proceedings*, Fla. Admin. Order No. AOSC20-15 (March 17, 2020); and *In re: COVID-19 Emergency Procedures for the Administering of Oaths Via Remote Audio-Video Communication Equipment*, Fla. Admin. Order No. AOSC20-16 (March 18, 2020), available at <https://www.floridasupremecourt.org/Emergency> (last visited February 20, 2021).



and Families.<sup>189</sup> AOSC20-23 was subsequently amended eight times, most recently on November 23, 2020.<sup>190</sup>

Fla. Admin. Order No. AOSC20-32, regarding public health and safety precautions for operational phase transitions, was initially issued on May 21, 2020.<sup>191</sup> It has been subsequently amended six times, most recently on December 21, 2020.<sup>192</sup> These administrative orders and the reports attached to them addressed many operational facets of the courts system, and with the other administrative orders respond to the current pandemic.<sup>193</sup> According to Chief Justice Canady, the courts’ “response to pandemic will forever change the way Florida’s courts operate.”<sup>194</sup> The judicial branch is using many of the lessons learned and solutions developed during the COVID-19 pandemic to prepare for other emergencies and to improve general efficiency of the judicial branch.<sup>195</sup>

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## **Personal Protective Equipment and Ventilator Shortages**

On March 11, 2020, the World Health Organization (WHO) designated “coronavirus disease 2019” (COVID-19) a global pandemic.<sup>196</sup> However, even before this declaration the WHO warned that the impending public health emergency could cause major disruptions to the availability of Personal Protective Equipment (PPE). On February 7, 2020, the WHO advised that “severe coronavirus-related disruptions in the personal protective equipment (PPE) supply, with increased demand—including some inappropriate use—[is] leading to inflated prices and shortages for healthcare workers who need the equipment most.”<sup>197</sup>

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<sup>189</sup> *In re: Comprehensive COVID-19 Emergency Measures for the Florida State Courts*, Fla. Admin. Order No. AOSC20-23 (April 6, 2020), available at <https://www.floridasupremecourt.org/Emergency> (last visited February 20, 2021).

<sup>190</sup> Amend’t 8 to *In re: Comprehensive COVID-19 Emergency Measures for the Florida State Courts*, Fla. Admin. Order No. AOSC20-23 (November 23, 2020), available at <https://www.floridasupremecourt.org/Emergency> (last visited February 20, 2021).

<sup>191</sup> *In re: COVID-19 Public Health and Safety Precautions for Phase 2*, Fla. Admin. Order No. AOSC20-32 (May 21, 2020), available at <https://www.floridasupremecourt.org/Emergency> (last visited February 26, 2021).

<sup>192</sup> Amend’t 6 to *In re: COVID-19 Public Health and Safety Precautions for Phase 2*, Fla. Admin. Order No. AOSC20-32 (December 21, 2020), available at <https://www.floridasupremecourt.org/Emergency> (last visited February 26, 2021).

<sup>193</sup> See e.g. Amend’t 6 to *In re: COVID-19 Public Health and Safety Precautions for Phase 2*, Fla. Admin. Order No. AOSC20-32 (December 21, 2020), and Amend’t 8 to *In re: Comprehensive COVID-19 Emergency Measures for the Florida State Courts*, Fla. Admin. Order No. AOSC20-23 (November 23, 2020), available at <https://www.floridasupremecourt.org/Emergency> (last visited February 16, 2021).

<sup>194</sup> Testimony of Chief Justice Charles Canady in front of the House Judiciary Committee (January 26, 2021) (This quote is at the 11:45 mark of the video record), available at <https://myfloridahouse.gov/VideoPlayer.aspx?eventID=6640> (last visited February 16, 2021).

<sup>195</sup> Testimony of Chief Justice Charles Canady in front of the House Judiciary Committee (January 26, 2021), available at <https://myfloridahouse.gov/VideoPlayer.aspx?eventID=6640> (last visited February 16, 2021).

<sup>196</sup> <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited February 16, 2021).

<sup>197</sup> <https://www.cidrap.umn.edu/news-perspective/2020/02/who-warns-ppe-shortage-ncov-pace-slows-slightly-china> (last visited February 16, 2021).

WHO Director General Tedros Adhanom Ghebreyesus was quoted as saying at the time “There is limited stock of PPE, and we need to make sure we get it to the people who need it most, in the places that need it most.”<sup>198</sup> His colleague, Mike Ryan, head of WHO’s health emergencies program, said that “[a]t every stage of the supply chain there is a possibility for disruption or profiteering or diversion, . . . [s]o this is not an easy problem to solve.”<sup>199</sup>

As cases surged in America, after the disease had worked its way from China and decimated Europe, reports began to surface that PPE availability was a critical issue facing our healthcare system nationwide. In a March interview from the New York Times, doctors and nurses from around the country painted a frightening picture, with PPE running short despite the pandemic’s relative infancy in the United States.<sup>200</sup> “With coronavirus cases soaring, doctors, nurses and other front-line medical workers across the United States are confronting a dire shortage of masks, surgical gowns and eye gear to protect them from the virus.”<sup>201</sup> The Times reported that doctors said, “[t]hey were increasingly anxious, fearing they could expose not only themselves to the virus, but their families and others.”<sup>202</sup>

Doctors and other front line workers were correctly anxious and fearful, due to the lack of PPE. A study published in the National Library of Medicine - National Institutes of Health in October 2020, on the contributing factors to PPE shortages during the pandemic describes the existential threat to the healthcare system that an unavailability of PPE causes.

Without proper PPE, healthcare workers are more likely to become ill. A decline in the supply of healthcare due to worker illness combines with intensified demand for care, causing healthcare infrastructure to become unstable, thus reducing the quality and quantity of care available. Sick healthcare workers also contribute to viral transmission. Hence ill practitioners increase the demand for care while simultaneously reducing health system capacity. This endogeneity makes a PPE shortage a system wide public health problem, rather than solely a worker's rights or occupational health issue. PPE for healthcare workers is a key component of infection prevention and control; ensuring that healthcare workers are protected means more effective containment for all.<sup>203</sup>

Another key piece of equipment in the care of critically ill patients, particularly in the early days of the pandemic, was ventilators. By late March and April, hospitals and healthcare workers fighting the COVID-19 pandemic had begun to report a shortage of ventilators.<sup>204</sup> “A ventilator pumps air—usually with extra oxygen—into patients’ airways when they are unable to breathe adequately on their own. If lung function has been severely impaired—due to injury or an illness such as COVID-19,” patients may need a ventilator[,]” according to Yale Medicine.<sup>205</sup> While a ventilator cannot cure COVID-19 or other respiratory illness, it can help keep patients alive long enough for their immune response to beat the

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<sup>198</sup> <https://www.statnews.com/2020/02/07/coronavirus-concerns-trigger-global-run-on-supplies-for-health-workers-causing-shortages/> (last visited February 16, 2021).

<sup>199</sup> Ibid.

<sup>200</sup> <https://www.nytimes.com/2020/03/19/health/coronavirus-masks-shortage.html> (last visited February 16, 2021).

<sup>201</sup> Ibid.

<sup>202</sup> Ibid.

<sup>203</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7531934/#bb0075> (last visited February 16, 2021).

<sup>204</sup> <https://www.nejm.org/doi/full/10.1056/NEJMp2006141> (last visited February 16, 2021).

<sup>205</sup> <https://www.yalemedicine.org/news/ventilators-covid-19> (last visited February 16, 2021).



disease. This makes them an incredibly useful tool in fighting mortality. Along with PPE, many were fearful that the United States would see the same sort of ventilator shortage and rationing that other countries had seen.<sup>206</sup>

There were many reasons why the United States saw such a shortage of healthcare equipment, especially PPE, during the current COVID-19 pandemic. The first among them is that the world, including the United States, experienced a global supply chain issue linked to the manufacturing of N95 respirators, a medical grade mask used in hospitals because it can filter 95 percent of airborne pathogens.

The United States does not manufacture most of the PPE that fulfills its healthcare needs, which in usual times is not an issue. However, 50 percent of the world's supply of PPE is manufactured in China, where the pandemic began.<sup>207</sup> When the outbreak started to grow in China they began to make fewer PPE because workers in China could not work, and they began to export fewer and fewer masks and other supplies.<sup>208</sup> During this time, China had essentially stopped exportation of masks.<sup>209</sup> A report from Shanghai published in the New York Times goes on to say that, "governments around the world are restricting exports of protective gear, which experts say could worsen the pandemic."<sup>210</sup> With regard to China:

China did not just stop selling masks — it also bought up much of the rest of the world's supply. According to official data, China imported 56 million respirators and masks in the first week after the January lockdown of the city of Wuhan, where the coronavirus emerged. On Jan. 30, the last day for which data is available, China managed to import 20 million respirators and surgical masks in just 24 hours.<sup>211</sup>

Another reason that the United States experienced a shortage of PPE and ventilators relates to the emergency healthcare supply available in the Strategic National Stockpile (SNS). "The Strategic National Stockpile's role is to supplement state and local medical supplies and equipment during public health emergencies. The supplies, medicines, and devices for lifesaving care contained in the stockpile can be used as a short-term, stopgap buffer when the immediate supply of these materials may not be available or sufficient[,]” according the U.S. Department of Health and Human Services (HHS).<sup>212</sup>

The country's SNS has been used before in times of great need. During the 2009 H1N1 influenza pandemic the HHS sent out supplies in advance of this pandemic influenza prior to its spread across the country. However, there have not been concerted efforts to replace and increase the stock of emergency healthcare equipment.<sup>213</sup>

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<sup>206</sup> <https://www.nytimes.com/2020/03/18/business/coronavirus-ventilator-shortage.html?searchResultPosition=17> (last visited February 16, 2021).

<sup>207</sup> <https://abcnews.go.com/Health/us-short-ppe/story?id=70093430> (last visited February 16, 2021).

<sup>208</sup> Ibid.

<sup>209</sup> <https://www.nytimes.com/2020/03/13/business/masks-china-coronavirus.html> (last visited February 16, 2021).

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> <https://www.phe.gov/about/sns/Pages/default.aspx> (last visited February 16, 2021).

<sup>213</sup> <https://www.pbs.org/wgbh/frontline/article/depleted-national-stockpile-contributed-to-covid-ppe-shortage/> (last visited February 16, 2021).

Greg Burel, who ran the SNS from 2007 until this year, says that the U.S. Congress did not make the SNS a priority in Appropriations, he was quoted as saying “You can’t be prepared if you’re not funded to be prepared[.]”<sup>214</sup> When asked why the stockpile was not sufficiently replenished, he said, [y]ou’d really have to ask the Congress.”<sup>215</sup> During the pandemic the United States has fallen well short of its goal to replenish the SNS, as well.<sup>216</sup>

The next major reason the United States experienced a critical shortage of PPE is basic supply and demand. According to a study published in the National Library of Medicine - National Institutes of Health, a major factor regarding the equipment shortage was that “. . . a major demand shock triggered by healthcare system needs as well as panicked marketplace behavior depleted PPE inventories.”<sup>217</sup> In late March, a national survey of hospital infection control professionals as well as mayors from around the country was conducted.<sup>218</sup> The results were staggering and show the spike in demand from a pandemic that was named a national emergency just two short weeks earlier.

A national survey of hospital infection control professionals reported that many medical facilities are nearing the end of their PPE supplies, despite frantic attempts to obtain more. As of 27 March, nearly a third of facilities were almost out of face masks, 13% had no more plastic face shields, and about 25% were completely or nearly out of gowns.

The mayors of many large and small US cities have also reported PPE shortages. Responding to a national survey, 91% of 213 mayors said their cities had inadequate supplies of facemasks and 88% said they didn’t have enough PPE for their medical and first responder personnel. The situation has got so bad that in some places, such as San Francisco and New York, medical facilities have asked members of the local community to donate masks they may have bought for their personal use. (internal citations omitted).<sup>219</sup>

Additionally, the pandemic was causing rash of consumer panic buying and hoarding, as the WHO had feared in February.<sup>220</sup> Panic buying caused another dramatic spike in the marketplace that was already over-burdened and under-supplied. Amazon, the nation’s largest retailer, was forced to suspend over 3,900 accounts for violating fair pricing policies, and they cancelled over half a million offers to sell masks.<sup>221</sup> Additionally Amazon instituted a policy allowing only proven healthcare professionals and entities to buy PPE on their site.<sup>222</sup>

Florida was not unlike the rest of the nation in its need for the necessary healthcare equipment. The national shortage left states to compete for supplies with each other, proactively turning to private

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<sup>214</sup> Ibid.

<sup>215</sup> Ibid.

<sup>216</sup> [https://www.wsj.com/articles/u-s-supplies-of-covid-19-ppe-fall-short-of-targets-11607509800?mod=hp\\_lead\\_pos5](https://www.wsj.com/articles/u-s-supplies-of-covid-19-ppe-fall-short-of-targets-11607509800?mod=hp_lead_pos5) (last visited February 16, 2021).

<sup>217</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7531934/#bb0075> (last visited February 16, 2021).

<sup>218</sup> <https://www.bmj.com/content/369/bmj.m1367.full> (last visited February 16, 2021).

<sup>219</sup> Ibid.

<sup>220</sup> <https://www.who.int/news/item/03-03-2020-shortage-of-personal-protective-equipment-endangering-health-workers-worldwide> (last visited February 16, 2021).

<sup>221</sup> [http://leixu.org/xu\\_price\\_gouging.pdf](http://leixu.org/xu_price_gouging.pdf) (last visited February 16, 2021).

<sup>222</sup> <https://business.amazon.com/en/work-with-us/healthcare/covid-19-supplies> (last visited February 16, 2021).

sector and not-for-profit entities to help in the ongoing competition to protect frontline health workers.<sup>223</sup>

The scene in many hospitals in Florida was bleak early in the pandemic, as the supply chain and economic factors discussed nationally led to reports of unsafe workplaces around the state.<sup>224</sup> While some large public hospitals had the equipment they needed, other hospitals were short, and often were forced to ask employees to reuse single use masks, and make other concessions.<sup>225</sup> Mary Mayhew, President and CEO of the Florida Hospital Association, testified about the unprecedented nature of supply limitations for hospitals during the Senate Pandemic Preparedness and Response Committee on January 14, 2021. She highlighted:

The unprecedented nature of the break down in supply chains for personal protective equipment (PPE); the lack of access to the necessary masks, the N95 masks, the surgical gowns, the gloves, just the impact that had on the hospitals and then not just the upending of the supply chain, but the exorbitant prices that were then charged for hospitals to get access to begin to try to address their inventory challenges.<sup>226</sup>

Ms. Mayhew further recognized the work of the Division of Emergency Management and county emergency management operations in helping hospitals and other providers obtain PPE.<sup>227</sup>

Hospitals were quickly at crisis level and worried that these measures were not enough to protect employees. Nursing homes, which are a major focus for government response due to the high morbidity in patients, reported as late as June that one in five facilities did not have a one week supply of PPE and some had no supplies at all.<sup>228</sup>

The response from the state of Florida varied, attempting to find help through any avenue available. Florida institutions of higher learning including those in the State University System, Florida College System, and private institutions donated the ventilators that they use to train students to hospitals.<sup>229</sup> These institutions of high learning worked with the Florida Department of Emergency Management to transport over 130 ventilators to hospitals in need around the state.<sup>230</sup>

In late March 2020, knowing that there was a growing concern over medical supplies the state of Florida opened an almost 200,000 square foot, air-conditioned logistics center in Orlando that runs 24/7. The facility was home to National Guard Hurricane supplies but was quickly converted to accommodate

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<sup>223</sup> <https://www.usnews.com/news/best-states/articles/2020-04-07/states-compete-in-global-jungle-for-personal-protective-equipment-amid-coronavirus> (last visited February 16, 2021).

<sup>224</sup> <https://wusfnews.wusf.usf.edu/health-news-florida/2020-04-17/many-treating-coronavirus-in-florida-still-lack-protective-equipment> (last visited February 17, 2021).

<sup>225</sup> Ibid.

<sup>226</sup> [https://www.flsenate.gov/media/VideoPlayer?EventID=1\\_3wpkrnbb-202102151200&Redirect=true](https://www.flsenate.gov/media/VideoPlayer?EventID=1_3wpkrnbb-202102151200&Redirect=true) (last visited February 16, 2021).

<sup>227</sup> Ibid.

<sup>228</sup> <https://www.miamiherald.com/article243279956.html> (last visited February 16, 2021).

<sup>229</sup> <http://www.fldoe.org/newsroom/latest-news/florida-post-secondary-institutions-donate-ventilators-to-local-hospitals.stml> (last visited February 17, 2021).

<sup>230</sup> <http://www.floridahealth.gov/newsroom/2020/04/042120-1630-covid19.pr.html> (last visited February 17, 2021).

shipments of PPE, and to funnel the supplies to the areas of the state most in need.<sup>231</sup> According to a report at the time, Florida was actively trying to take advantage of the Strategic National Stockpile as well, making use of relationships with the federal government to order 2 million masks.<sup>232</sup> That comprised a large portion of the 7.8 million masks total that the state ordered in March from all sources.<sup>233</sup>

By the middle of April 2020 the DEM had spent \$500 million on PPE and medical supplies for frontline workers and stressed that, they were searching everywhere to buy as many supplies as possible.<sup>234</sup> In fact, Florida DEM Director, Jared Moskowitz, became frustrated with manufacturer 3M, a large American manufacturer of the N95 masks and began to Tweet at their corporate account to sell directly to the state of Florida rather than distributors and foreign governments.<sup>235</sup> On January 28, 2021, the DEM Director Moskowitz reported that the Division had “sent more than 80 million masks and 21 million gloves out to the public, 15 million masks to long term care facilities, 5 million gloves, and 3 million gowns. We sent a million masks to our prison system, and six million masks to our schools.”<sup>236</sup>

On April 2, the President invoked the DPA regarding manufacturer 3M requiring that they must prioritize orders of PPE from the federal government over any other orders that the company may have outstanding.<sup>237</sup>

The President also invoked the DPA to clear up supply-chain issues encountered in the manufacturing of ventilators. The order directed the supply of materials to a number of companies with the express purpose of producing ventilators for the national supply.<sup>238</sup> Automakers like General Motors and Ford who had re-opened manufacturing facilities to produce ventilators would enter into contracts under the same authority to produce large numbers of ventilators as well.<sup>239</sup>

In addition, at the federal level on March 27, when the CARES Act was passed, the bill directed the FDA to create and maintain a publicly available, up-to-date list of the devices the FDA has determined to be in shortage.<sup>240</sup> Provisions also included requirements for manufacturers of certain devices to “. . . notify the FDA of an interruption or permanent discontinuance in the manufacture . . . [.]” of the device, or an

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<sup>231</sup> <https://www.wufl.org/post/florida-opens-covid-19-supply-center#stream/0> (last visited February 17, 2021).

<sup>232</sup> *Ibid.*

<sup>233</sup> *Ibid.*

<sup>234</sup> <https://health.wusf.usf.edu/health-news-florida/2020-04-15/florida-spends-500-million-to-battle-covid-19> (last visited February 17, 2021).

<sup>235</sup> <https://twitter.com/JaredEMoskowitz/status/1244657529663217664> and

<https://twitter.com/JaredEMoskowitz/status/1245740572477919232> (last visited February 17, 2021).

<sup>236</sup> [https://www.flsenate.gov/media/VideoPlayer?EventID=1\\_3wpkrnbb-202102151200&Redirect=true](https://www.flsenate.gov/media/VideoPlayer?EventID=1_3wpkrnbb-202102151200&Redirect=true) (last visited February 17, 2021).

<sup>237</sup> <https://www.politico.com/news/2020/04/02/trump-expands-dpa-order-162128> (last visited February 17, 2021).

<sup>238</sup> <https://www.cnn.com/2020/04/02/politics/defense-production-act-ventilator-supplies/index.html> (last visited February 17, 2021).

<sup>239</sup> <https://www.cnn.com/2020/03/27/business/automakers-ventilator-production-coronavirus/index.html> (last visited February 17, 2021).

<sup>240</sup> <https://www.fda.gov/medical-devices/coronavirus-covid-19-and-medical-devices/medical-device-shortages-during-covid-19-public-health-emergency> (last visited February 17, 2021).

interruption in the manufacture of the device that is likely to lead to a meaningful disruption in supply.”<sup>241</sup>

Acting Secretary of AHCA Shevaun Harris testified in the Florida Senate Select Committee on Pandemic Preparedness and Response on February 4, 2021.

The state has built a PPE reserve with more than 20 million masks, 10 million gowns, and 9.4 million gloves to make sure that we are prepared for any surges, hurricane season, and to administer the vaccine. To make sure the state continues to be prepared with PPE, the division executed a long-term contract with Honeywell to purchase 12 million masks that will continue to be periodically received throughout July of this year.<sup>242</sup>

American companies are beginning to produce masks in the United States to help with supply chain issues the country faced amid the pandemic.<sup>243</sup> The continued use of masks is important according to the CDC because new, more transmissible variants of the coronavirus have continued to emerge across the world.<sup>244</sup>

In order to perform their duties, law enforcement officers must have the appropriate personal protective equipment to protect themselves, as well as the people they serve. Early in the COVID-19 pandemic, law enforcement was not properly equipped.<sup>245</sup> Law enforcement and first responder agencies that sought or continue to seek personal protective equipment (PPE) appear to be subject to the same market shortages as healthcare providers and other frontline employees.<sup>246</sup>

Finding solutions to PPE preparedness will be a key to being ready for the unexpected disease. Studies continue to confirm that mask wearing reduces and helps eliminate spread of infections.<sup>247</sup> Businesses like the National Football League and National Basketball Association who followed mask protocols and social distancing were able to reduce spread while staying open for business, housing big games in Florida.<sup>248</sup> Innovative thinking found ways to mitigate risk, slow the spread, and continue with life without complete shutdowns.<sup>249</sup>

At the Florida Senate Select Committee on Pandemic Preparedness and Response on February 4, 2021, there was discussion about finding innovative ways to create stockpile arrangements similar to the

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<sup>241</sup> <https://www.fda.gov/medical-devices/coronavirus-covid-19-and-medical-devices/medical-device-supply-chain-notifications-during-covid-19-pandemic#section506J> (last visited February 17, 2021).

<sup>242</sup> [Select Committee on Pandemic Preparedness and Response \(flsenate.gov\)](#) (last visited February 17, 2021).

<sup>243</sup> <https://www.reuters.com/article/us-health-coronavirus-masks/one-u-s-companys-risky-effort-to-build-a-new-mask-factory-during-covid-idUSKBN2A516H> (last visited February 17, 2021).

<sup>244</sup> <https://thehill.com/policy/healthcare/537169-cdc-director-covid-infections-hospitalizations-falling> (last visited February 17, 2021).

<sup>245</sup> <https://www.policefoundation.org/national-police-foundation-launches-real-time-situational-awareness-tool-for-law-enforcement-to-track-covid-19-officer-exposures-and-ppe-impacts/> (last visited February 17, 2021).

<sup>246</sup> See <https://www.policefoundation.org/national-police-foundation-launches-real-time-situational-awareness-tool-for-law-enforcement-to-track-covid-19-officer-exposures-and-ppe-impacts/> (last visited February 17, 2021).

<sup>247</sup> [https://www.thelancet.com/journals/landig/article/PIIS2589-7500\(20\)30293-4/fulltext](https://www.thelancet.com/journals/landig/article/PIIS2589-7500(20)30293-4/fulltext) (last visited February 17, 2021).

<sup>248</sup> <https://www.cnn.com/2021/02/05/health/super-bowl-coronavirus-nfl-season-gupta/index.html> (last visited February 17, 2021).

<sup>249</sup> <https://www.nytimes.com/2021/02/05/sports/football/seahawks-coronavirus-nfl.html?referringSource=articleShare> (last visited February 17, 2021).

contracts nursing homes entered into for generators after Hurricane Irma.<sup>250</sup> It is clear that sufficient PPE availability and usage is a key component to preparedness and response in a pandemic.<sup>251</sup>

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## **Education**<sup>252</sup>

The Florida Department of Education (DOE) serves approximately 2.8 million students.<sup>253</sup> It has 4,200 public schools, 28 colleges, 202,000 instructional staff, 46,000 college professors and administrators, and 338,000 full-time staff throughout the state.<sup>254</sup> DOE also manages programs that assist blind, visually-impaired, and disabled individuals with succeeding either in educational settings or careers; thereby, facilitating independence and self-sufficiency in those students.<sup>255</sup>

In response to the pandemic, on March 23, 2020, the Commissioner of Education (Commissioner), through his delegated authority under the Governor's Executive Order 20-52, issued his first emergency order, DOE Order No. 2020-EO-01(DOE EO-01).<sup>256</sup> This emergency order addresses a comprehensive list of issues, including issues related to Florida College System Institutions; K-12 assessments, accountability, and promotion; Private schools that accept scholarship money; reallocation of funding; and service of students with IEPs or 504 Plans.<sup>257</sup>

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## **Operations Under Executive Orders**

Similar to efforts across the country and the world,<sup>258</sup> DOE EO-01 stated "all school districts are recommended to keep their facilities closed except to staff and teachers, per CDC guidance, through April 15, 2020."<sup>259</sup> The order then stated "[that] In keeping with their district continuity plan, each district must deliver educational services to students while they remain at home." Districts were encouraged to build out continuity plans to deliver instruction while students were at home, and Florida College System institutions were strongly recommended to operate virtually.<sup>260</sup>

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<sup>250</sup> [https://www.flsenate.gov/media/VideoPlayer?EventID=1\\_cb9feylr-202102041130&Redirect=true](https://www.flsenate.gov/media/VideoPlayer?EventID=1_cb9feylr-202102041130&Redirect=true) (last visited February 17, 2021).

<sup>251</sup> [https://www.thelancet.com/journals/landig/article/PIIS2589-7500\(20\)30293-4/fulltext](https://www.thelancet.com/journals/landig/article/PIIS2589-7500(20)30293-4/fulltext) (last visited February 17, 2021).

<sup>252</sup> Note: As of February 16, 2021, the DOE has issued 8 Executive Orders, and numerous documents associated therewith containing guidance, Q&A, and updates. This review includes highlights from the executive orders, but does not explore the associated documents providing guidance or other information. These documents are available at the following link: <http://www.fldoe.org/em-response/index.stml> (last visited February 16, 2021).

<sup>253</sup> <http://www.fldoe.org/about-us/> (last visited February 16, 2021).

<sup>254</sup> Ibid.

<sup>255</sup> Ibid.

<sup>256</sup> <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf> (last visited February 15, 2021).

<sup>257</sup> Ibid.

<sup>258</sup> [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-52.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf) (last visited February 19, 2021).

<sup>259</sup> <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf> (last visited February 15, 2021).

<sup>260</sup> Ibid.

While schools and other facilities were closed, DOE EO-01 also waived necessary statutes so there was no interruption in funding to “all school readiness, voluntary prekindergarten, public K-12, private scholarship programs, career and technical centers and state college programs as though there was no disruption.”<sup>261</sup> The order allowed districts to reallocate funds to help low-income students purchase digital devices and establish internet connections, and stated that students with an IEP or 504 plan should be included in continuity plans due to closures.<sup>262</sup> Also, the order waived “the requirement for each student to maintain direct student contact with teachers in order for a private school to participate in the state's choice scholarship programs,” which applied to other state scholarships as well.<sup>263</sup>

The order cancelled all remaining state assessments for K-12 in the 2019-2020 school year, graduating students were exempted from the requirement that schools use assessments to issue their diploma, and specified accountability measures for schools and teachers were waived.<sup>264</sup> School districts and other educational facilities were advised to evaluate students for promotion, graduation, and final course grades for the school year “based on guidance from the [DOE].”<sup>265</sup> DOE EO-01 also stated accountability measures reliant on data from standardized assessments would not be calculated for the 2019-2020 school year for K-12 school grades, school improvement ratings for alternative schools, and value-added model (VAM) scores for educators.<sup>266</sup>

With regard to School Readiness and VPK, DOE EO-01 authorized Early Learning Coalitions to pay for additional child absences while providers were open, authorized reimbursements to providers during temporary closures related to the pandemic, and extended timelines for various reporting requirements.<sup>267</sup> The order also provided financial mitigation for families including waiving parent copays/fees for School Readiness families with incomes above 100% of the poverty level.<sup>268</sup> According to the DOE, overall, in mid-April the state was at a point where only 42 percent of early learning/VPK providers were open; “. . . we were really at a critical mass point where the early learning world could have potentially collapsed.”<sup>269</sup>

Between March and May 2020, the DOE, the local districts, teachers, parents, and all stakeholders worked to try to minimize the negative impacts that school closures and re-opening in a virtual model would have on the students.<sup>270</sup> On May 13, 2020, the Commissioner issued his second emergency order, DOE Order No. 2020-EO-02 (DOE EO-02), which extended various timeframes including but not limited

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<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

<sup>263</sup> Ibid.

<sup>264</sup> Ibid.

<sup>265</sup> <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf> (last visited February 15, 2021), and <http://www.fldoe.org/core/fileparse.php/19861/urlt/DPSEO-Webinar513.pdf> (last visited February 15, 2021).

<sup>266</sup> <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf> (last visited February 15, 2021).

<sup>267</sup> Ibid.

<sup>268</sup> Ibid.

<sup>269</sup> <https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=6720> (last visited February 18, 2021).

<sup>270</sup> See e.g. <http://www.fldoe.org/core/fileparse.php/19861/urlt/FDOE-Opening.pdf> available at <http://www.fldoe.org/em-response/index.shtml> (last visited February 15, 2021).



to expiring licenses, applications for licenses, assessment deadlines, and others.<sup>271</sup> This order also suspended the requirement to conduct annual evaluations for teachers and administrators for the 2019-2020 school year, and allowed districts to determine how to meet differentiated pay requirements for teachers on the performance salary schedule

DOE Order No. 2020-EO-05, was issued on June 10, 2020.<sup>272</sup> This order announced that due to the cancellation of the spring and early summer ACT and SAT tests students had until July 31 to submit a qualifying score for a Bright Futures Award. The order also acknowledged that due to the pandemic, students who were unable to complete their planned volunteer hours in order to qualify for the Bright Futures Scholarship Program would still receive the award, if district staff submitted qualifying paperwork.<sup>273</sup>

In DOE Order No. 2020 EO-06, issued on July 6, 2020, Commissioner Corcoran stated that “education is critical to the success of the state and to an individual, and extended school closures can impede educational success of students, [and] impact families’ well-being.”<sup>274</sup> The order would go on to say that “schools are not just the site of academic learning, schools provide many services to students that are critical to the well-being of students and families, such as nutrition, socialization, counseling, and extra-curricular activities.”<sup>275</sup> The Commissioner also stressed the need for a comprehensive plan for reopening schools for the 2020 fall semester.

In an effort to reopen brick and mortar schools, DEO EO-06 emphasized the importance of ensuring the quality and continuity of the educational process.<sup>276</sup> Reopening requirements and planning guidelines were provided. The requirements were for all school boards/charter school governing boards to reopen schools for face-to-face instruction five days a week, minimally; offer all legally required services so families can educate their children in a brick and mortar school on a full time basis; give rigorous progress monitoring; ensure that students with IEPs have the necessary services to experience free and appropriate instruction; and call an English Language Learners Committee meeting which encompasses appropriate staff members and parents to find out if more or supplemental English for Speakers of Other Languages (ESOL) services may be needed.<sup>277</sup> Charter schools who submitted reopening plans to sponsoring districts were granted the same instructional methods flexibility.<sup>278</sup>

School districts and charter school governing boards with an approved reopening plan would receive both reporting flexibility and financial continuity as follows.<sup>279</sup>

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<sup>271</sup> <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEEmergencyOrder2020-EO-02.pdf> (last visited February 18, 2021).

<sup>272</sup> <http://www.fldoe.org/core/fileparse.php/19861/urlt/2020-EO-05.pdf> (last visited February 16, 2021).

<sup>273</sup> Ibid.

<sup>274</sup> <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOE-2020-EO-06.pdf> (last visited February 16, 2021).

<sup>275</sup> Ibid.

<sup>276</sup> Ibid.

<sup>277</sup> Ibid.

<sup>278</sup> Ibid.

<sup>279</sup> Ibid.



a. Full Florida Education Finance Program funding from state revenue based on General Appropriations Act (GAA) full-time equivalent (FTE) student membership forecast for 2020 fall semester. School boards and charter school governing boards will receive the GAA funding based on pre-COVID-19 FTE student membership forecasts. Rule 6A-1.0452, Florida Administrative Code, is waived to the extent that the Department will not reduce the distribution of funds based on the July and October 2020 student surveys.

b. Full FTE credit for innovative learning environments. Although it is anticipated that most students will return to full-time brick and mortar schools, some parents will continue their child's education through innovative learning environments, often due to the medical vulnerability of the child or another family member who resides in the same household. As described in this Order, school boards and charter school governing boards with an approved reopening plan are authorized to report approved innovative learning students for full FTE credit. However, students receiving virtual education will continue to receive FTE credit as provided in section 1011.61(1)(c)1.b.(III)-(IV), Florida Statutes.

c. October survey and instructional hours. The October survey will record students receiving instruction through traditional as well as innovative learning environments. The Department will provide modified instructions for the October survey that will authorize the reporting of instruction through traditional and innovative learning environments. Sections 1011.61(1)(a) and 1003.23(1), Florida Statutes, and Rules 6A-1.0451 and 6A-1.0014, Florida Administrative Code, are waived to provide school districts and charter school governing boards with additional flexibility in recording and reporting student attendance and instructional hours, based on guidance from the Department consistent with this Order. (emphasis in original).<sup>280</sup>

Private schools accepting scholarship students were permitted to provide the DOE with progress monitoring data for scholarship students at the conclusion of the 2020 fall semester to fulfill their teacher to student contact and daily and hourly instructional time requirements.<sup>281</sup>

In response to DOE EO-06, K-12 school districts began submitting reopening plans in preparation for fall classes.<sup>282</sup>

DOE Order No. 2020-EO-07 (DOE EO-07), issued November 30, 2020<sup>283</sup> found that “parents and districts continue to need the educational and financial benefits provided by DOE Order No. 2020-EO-06.”<sup>284</sup>

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<sup>280</sup> Ibid.

<sup>281</sup> Ibid. The referenced contact requirements are under s 1002.421, Fla. Stat.

<sup>282</sup> <http://www.fldoe.org/em-response/index.html> (last visited February 10, 2021).

<sup>283</sup> <http://www.fldoe.org/core/fileparse.php/5673/urlt/DOEOrder2020-EO-07.pdf> (last visited February 15, 2021).

Highlights of DOE Order No. 2020-EO-07 include:

maintaining a parent’s right to choose what educational option best fits the needs of their family, including innovative learning options that benefit students, families and school employees; guaranteeing the full panoply of services for at-risk students; and progress monitoring for all students, while ensuring financial flexibility and stability for school districts and charter schools. In addition, EO-07 requires educational interventions for students who may be falling behind, especially at-risk students, and rewards school districts and individual charter schools that have exceeded their projected enrollment.

<sup>284</sup> <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOE-2020-EO-06.pdf> (last visited February 4, 2021).

Further, DOE EO-07 found that the flexibilities provided by emergency orders are necessary “to respond to and mitigate the impact of the emergency and promote the health, safety and welfare of persons connected with Florida’s educational system.”<sup>285</sup>

DOE EO 07 provided for an updated Spring 2021 Education Plan which continued re-opening plans in DOE EO-06 and an updated agreement of assurances, and financial continuities.<sup>286</sup> The order states that “[s]chool districts and charter schools must not unreasonably restrict the decision of a parent or guardian to alter the learning modality (in-person, innovative, virtual) that best suits their child’s needs.”<sup>287</sup> Additionally the EO provided that districts must enhance their outreach to parents and guardians to ensure maximum in person enrollment as well as provide professional development to teachers with a focus on teachers using innovative and virtual modalities.<sup>288</sup>

Spring 2020 was a tumultuous period for the field of education. As the novel coronavirus swept its way across the U.S., schools nationwide experienced obstacles to providing instruction to America’s students.<sup>289</sup> Florida closed schools effective March 16, 2020 for 2 weeks, and subsequently extended the closures through the end of the academic year.<sup>290</sup> In the spring of the 2019-20 school year, the vast majority of U.S. schools were closed, including schools in 48 states, “affecting at least 50.8 million public school students.”<sup>291</sup> Entering an abrupt closure of schools caused schools to quickly ramped up their digital formats for instruction or even, in some cases, had to create them from scratch.

Two recent studies were done to determine if in-person instruction led to spreading COVID-19. One of these studies reported that, “we see no indication that in-person school reopenings have increased COVID-19 hospitalizations in the counties below 36-44 new COVID-19 hospitalizations per 100,000 population per week.”<sup>292</sup> The study looked at the trade-off of keeping schools closed and reopening them.

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<sup>285</sup> <http://www.fldoe.org/core/fileparse.php/5673/urlt/DOEOrder2020-EO-07.pdf> (last visited February 4, 2021).

<sup>286</sup> <https://www.fldoe.org/em-response/index.stml> (last visited February 17, 2021).

<sup>287</sup> <http://www.fldoe.org/core/fileparse.php/5673/urlt/DOEOrder2020-EO-07.pdf> (last visited February 17, 2021).

<sup>288</sup> Ibid.

<sup>289</sup> <https://www.tampabay.com/news/education/2020/06/08/remote-learning-was-tough-for-many-will-summer-school-be-different/> (last visited February 18, 2021), and <https://all4ed.org/coronavirus-and-the-classroom-recommendations-for-prioritizing-equity-in-the-response-to-covid-19/> (last visited February 18, 2021).

<sup>290</sup> [https://ballotpedia.org/School\\_responses\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic\\_during\\_the\\_2019-2020\\_academic\\_year#School\\_closures\\_by\\_date](https://ballotpedia.org/School_responses_to_the_coronavirus_(COVID-19)_pandemic_during_the_2019-2020_academic_year#School_closures_by_date) (last visited February 24, 2021).

- “April 18, 2020: Gov. Ron DeSantis (R) closed schools for the remainder of the academic year. Prior to the announcement, schools were closed through May 1.
- March 30, 2020: The Florida Department of Education announced that the statewide school closure, scheduled to end April 14, was extended through May 1.
- March 17, 2020: DeSantis extended the public school closure through April 14.
- March 13, 2020: The Florida Department of Education closed schools across the state for two weeks effective March 16.
- Total students affected: 2,816,791”

<sup>291</sup> <https://www.edweek.org/leadership/the-coronavirus-spring-the-historic-closing-of-u-s-schools-a-timeline/2020/07> (last visited February 18, 2021).

<sup>292</sup> <https://www.reachcentered.org/publications/the-effects-of-school-reopenings-on-covid-19-hospitalizations> (last visited February 9, 2021).

The extent of this trade-off between the costs and benefits of reopening schools depends on how the virus spreads, the measures that schools take to reopen safely, and the kinds of social interactions in-person schooling replaces. Schools are supervised environments whose leaders are usually actively engaged with public health officials. When students are at home, in contrast, there may be less supervision, depending on home circumstances. So, while the number of social interactions is higher in schools, the effect on COVID-19 spread may be offset, at least in part, by higher safety of those interactions.<sup>293</sup>

In late December 2020, a second study looking at the rates of COVID-19 in school districts offering in person instruction was released. The study concluded:

Where COVID numbers were already low, schools didn't seem to contribute to the virus' spread. But where pre-existing rates were higher, the risks of school opening were higher, too. In Michigan, that threshold was roughly 20 new daily cases per 100,000 people, at which point in-person schooling seemed to increase case counts. In Washington, the bar was even lower: about five cases per 100,000.<sup>294</sup>

"Community transmission rates is one of the most important issues to consider when reopening classrooms," said Tina Q. Tan, a professor of pediatrics at Northwestern University who specializes in infectious diseases." (quotations in original.)<sup>295</sup> Similarly, the New York Times indicated good news about schools being able to safely operate.

Evidence has increased that schools, particularly elementary schools, are unlikely to seed transmission when community spread is at moderate or low levels — provided they use mitigation strategies, including mask requirements, social distancing and good ventilation.

But in places where the virus has surged, officials say they have seen more transmission in schools, especially in higher grades. High school sports have been a particular source of infections, leading some states to suspend them, outraging many parents.<sup>296</sup>

The results parallel much of what has already been said; controlling the virus in the community is the best method to keep schools open. On February 12, 2021, the CDC provided an update on new resources and tools, including new indicators, for the safe opening of schools.<sup>297</sup> Additionally they published an Operational Strategy for schools to open safely for in-person instruction through phased mitigation.<sup>298</sup>

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<sup>293</sup> Ibid.

<sup>294</sup> <https://www.chalkbeat.org/2021/1/4/22214312/covid-spread-schools-research> (last visited February 17, 2021) referencing the study available at <https://caldercenter.org/sites/default/files/CALDER%20WP%20247-1220-2.pdf> (last visited February 17, 2021).

<sup>295</sup> <https://www.msn.com/en-us/news/us/trump-says-open-schools-teachers-say-not-until-they-re-safe-as-cases-rise-unions-may-win/ar-BB17UqZg> (last visited February 17, 2021).

<sup>296</sup> <https://www.nytimes.com/2021/01/21/us/schools-coronavirus.html> (last visited February 17, 2021).

<sup>297</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/indicators.html> (last visited February 17, 2021).

<sup>298</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html> (last visited February 17, 2021).

## Impacts of Alternative Methods of Teaching

On February 7, 2021, President Biden reportedly called school closures a national emergency, saying “I think it’s time for schools to reopen safely. . . . You have to have fewer people in the classroom, you have to have ventilation systems that have been reworked.”<sup>299</sup> This article referenced an October 2020 study<sup>300</sup> that estimates three million students in the U.S. lacked formal education since March 2020.<sup>301</sup> Some school districts offered in-person instruction as an option to the younger students, but some only on a part-time bases.<sup>302</sup>

School closures have been a controversial topic since COVID-19 became widespread in the U.S. Some believe there is a safety factor in keeping students home from school, while others try to look at the cost to children’s physical, mental, and emotional health.<sup>303</sup> For example, students often depend on the breakfasts and lunches provided by the schools for their only source of nutritious meals.<sup>304</sup>

Youth who have lived in poverty, “particularly early in life or for an extended period, are at risk of a host of adverse health and developmental outcomes through their life.”<sup>305</sup> Living in poverty, during childhood, “is associated with lower school achievement; worse cognitive, behavioral, and attention-related outcomes; higher rates of delinquency, depressive and anxiety disorders; and higher rates of almost every psychiatric disorder in adulthood.”<sup>306</sup> A policy report by The Annie E. Casey Foundation highlights that economic damages from the pandemic affect education as well.

To succeed now and after the pandemic, families must have good health, both physical and mental, and the health care to maintain it. They must also have food and the money to buy it; safe, stable housing and communities; education and the means to access it; and quality child care so that parents can work.<sup>307</sup>

The American Academy of Pediatrics strongly advocates for in-person learning.<sup>308</sup>

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<sup>299</sup> <https://news.yahoo.com/biden-school-closures-national-emergency-222234157.html?guccounter=2> (last visited February 17, 2021).

<sup>300</sup> <https://bellwethereducation.org/publication/missing-margins-estimating-scale-covid-19-attendance-crisis> (last visited February 17, 2021).

<sup>301</sup> <https://news.yahoo.com/biden-school-closures-national-emergency-222234157.html?guccounter=1> (last visited February 17, 2021).

<sup>302</sup> <https://www.nytimes.com/2021/01/21/us/schools-coronavirus.html> (last visited February 8, 2021).

<sup>303</sup> <https://edsource.org/2020/school-district-leaders-from-around-the-u-s-rethink-education-emphasize-online-learning/632601> (last visited February 17, 2021).

<sup>304</sup> “Nearly 1 in 6 [children] lived in poverty in 2018—nearly 11.9 million children.” This rate “is nearly one-and-a-half times higher than that for adults ages 18-64 (11 percent) and two times higher than that for adults 65 and older (10 percent).” <https://www.childrensdefense.org/policy/resources/soac-2020-child-poverty/> (last visited February 13, 2021).

<sup>305</sup> <https://www.psychiatrictimes.com/view/addressing-poverty-and-mental-illness> (last visited February 17, 2021).

<sup>306</sup> <https://www.psychiatrictimes.com/view/addressing-poverty-and-mental-illness> (last visited February 15, 2021).

<sup>307</sup> <https://www.aecf.org/resources/kids-families-and-covid-19/> (last visited February 5, 2021).

<sup>308</sup> <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/> (last visited February 15, 2021).

Lengthy time away from school and associated interruption of supportive services often results in social isolation, making it difficult for schools to identify and address important learning deficits as well as child and adolescent physical or sexual abuse, substance use, depression, and suicidal ideation. This, in turn, places children and adolescents at considerable risk of morbidity and, in some cases, mortality. Beyond the educational impact and social impact of school closures, there has been substantial impact on food security and physical activity for children and families.<sup>309</sup>

The state of Florida will have a monumental task of preparing the future generations of children who live through the COVID-19 pandemic. According to Dr. Tedros Adhanom Ghebreyesus, Director General of the World Health Organization (WHO), “Young people are less at risk of severe disease and death from COVID-19 but will be the most affected by the long-term consequences of the pandemic, which will shape the world they live and work in for decades to come.”<sup>310</sup> Therefore, one of the state’s primary concerns must be the complete education of each child. This must be balanced with the health risks associated with in-person instruction. School districts have had to consider many ways to safely resume in person instruction during the fall 2020 term.

Planning for the 2020/2021 school year included much uncertainty about the risk of transmission in school settings. While the benefits of in-person school attendance were well understood, the appropriate evaluation of its risks vs benefits was hampered by limited information about transmission risk in classroom settings. Closing schools could adversely affect students’ academic progress, mental health, and access to essential services; however, if SARS-CoV-2 rapidly spread in classrooms, opening schools might accelerate community transmission of the virus. There were no simple decisions for parents, teachers, administrators, or public officials.<sup>311</sup>

When schools closed and online instruction began, many students vanished from the educational arena.<sup>312</sup> Some teachers have noted as many as 50 percent of their students are absent.<sup>313</sup> Even during the pre COVID-19 era, chronic absenteeism was a dilemma in the US.<sup>314</sup> Now that schools have gone virtual, some student have never logged in to their classes, some have ceased logging in, while others are just not doing assignments.<sup>315</sup> Rates of absenteeism are higher in schools with greater numbers of

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<sup>309</sup> <https://www.help.senate.gov/chaire/newsroom/press/senate-education-committee-chairman-publishes-resource-webpage-to-help-schools-plan-to-reopen-safely-in-the-fall#:~:text=Lengthy%20time%20away%20from%20school,%2C%20depression%2C%20and%20suicidal%20ideation> (last visited February 17, 2021).

<sup>310</sup> <https://www.who.int/news-room/feature-stories/detail/who-launches-youth-council-to-advise-on-global-health-and-development-issues-affecting-young-people> (last visited February 17, 2021).

<sup>311</sup> Honein MA, Barrios LC, Brooks JT. Data and Policy to Guide Opening Schools Safely to Limit the Spread of SARS-CoV-2 Infection. JAMA. Available at <https://jamanetwork.com/journals/jama/fullarticle/2775875> (last visited February 17, 2021).

<sup>312</sup> <https://www.nytimes.com/2020/04/06/us/coronavirus-schools-attendance-absent.html> (last visited February 17, 2021).

<sup>313</sup> Ibid.

<sup>314</sup> Ibid.

<sup>315</sup> Ibid.

low income students, possibly due to a lack of access to home computers and spotty internet connections.<sup>316</sup>

This number of children missing from school as a consequence of closing brick-and-mortar schools then providing hybrid and or digital instruction is alarming. Many “disappearing” or no-show students have not attended in person, logged in online, or participated in any part of hybrid instruction.<sup>317</sup>

Both low income urban, and rural school districts, have been challenged to provide online instruction because of Internet connection difficulties.<sup>318</sup> In the nation’s second largest school district, Los Angeles, one third of the high school students there were not logging in to their classes.<sup>319</sup>

While Florida’s schools remain open in 2021, families have the option to keep students at home to do remote learning, unless the students were struggling academically.<sup>320</sup> If they were not doing well with remote learning, their school district would inform them they must return to an on-ground method of instruction.<sup>321</sup> If the parents insist on keeping the students at home, they will have to provide a written acknowledgment of their intent to have the student continue with remote learning.<sup>322</sup>

“The many benefits of in-person schooling should be weighed against the risks of spreading COVID-19 in the school and community. Working with States, Tribes, Localities, and Territories (STLT), schools can weigh levels of community transmission and their capacity to implement appropriate mitigation measures in schools to protect students, teachers, administrators, and other staff.”<sup>323</sup> In an October 21, 2020 National Public Radio (NPR) report discussed the shift in worry from keeping schools open, to the risks of closing them.

Despite widespread concerns, two new international studies show no consistent relationship between in-person K-12 schooling and the spread of the coronavirus. And a third study from the United States shows no elevated risk to childcare workers who stayed on the job.

Combined with anecdotal reports from [a number](#) of [U.S. states](#) where schools are open, as well as a [crowdsourced dashboard](#) of around 2,000 U.S. schools, some medical experts are saying it's time to shift the discussion from the risks of opening K-12 schools to the risks of keeping them closed.<sup>324</sup>

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<sup>316</sup> Ibid.

<sup>317</sup> <https://www.local10.com/news/local/2020/12/08/hundreds-of-students-are-missing-from-south-florida-schools/> (last visited February 17, 2021).

<sup>318</sup> <https://ies.ed.gov/ncee/edlabs/regions/northeast/Blog/Post/24> (last visited February 15, 2021).

<sup>319</sup> <https://www.latimes.com/california/story/2020-03-30/coronavirus-los-angeles-schools-15000-high-school-students-absent> (last visited February 15, 2021).

<sup>320</sup> <https://www.fldoe.org/core/fileparse.php/5673/urlt/DOEOrder2020-EO-07.pdf> (last visited February 15, 2021).

<sup>321</sup> Ibid.

<sup>322</sup> Ibid.

<sup>323</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html> (last visited February 17, 2021).

<sup>324</sup> <https://www.npr.org/2020/10/21/925794511/were-the-risks-of-reopening-schools-exaggerated> (last visited February 17, 2021).

Adherence to mitigation efforts can aid schools in safely reopening to provide much needed in-person learning.<sup>325</sup> Typical scheduled periods of time out of school have been studied for years.<sup>326</sup> The learning that may be lost during the summer break, for schools who do not observe a year-round schedule, call this the summer-slide.<sup>327</sup> March through May of 2020 will no doubt show some loss in learning due to closing schools and transitioning to remote learning during the COVID-19 pandemic.<sup>328 329</sup>

According to testimony by J. Alex Kelly, Chief of Staff Florida Department of Education, at the Senate Select Committee on Pandemic Preparedness and Response, DOE was focused on students having the ability to learn in the classroom -- from a teacher.

All [of] our students transitioned to distance learning, pretty much, with a couple [of] exceptions, in the Spring. At the same time, we recognize that was not a long term solution. The vast majority of our students, 97%, 98%, they need to be in school, they need to be in front of a great teacher, they need to have that [sic] benefit of peer to peer learning, they need to have those supports we are talking about.<sup>330</sup>

Mr. Kelly went on to explain while Florida pivoted to digital learning, digital learning left gaps in students' education when compared to face to face instruction.<sup>331</sup> He explained for most students, the level and quality of education provided through distance learning, especially since the transition occurred almost overnight, was going to leave gaps in the students' education.<sup>332</sup>

While many teachers were unfamiliar with remote instruction, districts have been tasked with providing professional development to teachers so they can in turn provide quality instruction to students in alternative formats.<sup>333</sup> Not only have students had to learn new modalities of learning but teachers have had to learn how to deliver instruction in new ways.<sup>334</sup>

"School districts from coast to coast have reported the number of students failing classes has risen by as many as two or three times — with English language learners and disabled and disadvantaged students

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<sup>325</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html#essential-elements> (last visited February 17, 2021).

<sup>326</sup> <https://journals.sagepub.com/doi/10.3102/0013189X20965918> (last visited February 17, 2021).

<sup>327</sup> <https://www.the74million.org/article/lost-learning-lost-students-covid-slide-not-as-steep-as-predicted-nwea-study-finds-but-1-in-4-kids-was-missing-from-fall-exams/> (last visited February 17, 2021).

<sup>328</sup> <https://journals.sagepub.com/doi/10.3102/0013189X20965918> (last visited February 17, 2021).

<sup>329</sup> [https://credo.stanford.edu/sites/g/files/sbiybj6481/f/short\\_brief\\_on\\_learning\\_loss\\_final\\_v.3.pdf](https://credo.stanford.edu/sites/g/files/sbiybj6481/f/short_brief_on_learning_loss_final_v.3.pdf) (last visited February 17, 2021).

<sup>330</sup> Testimony at the February 15, 2021, meeting of the Senate Select Committee on Pandemic Preparedness and Response, video available at [https://flsenate.gov/media/videoplayer?EventID=1\\_3wpkrnbb-202102151200&Redirect=true](https://flsenate.gov/media/videoplayer?EventID=1_3wpkrnbb-202102151200&Redirect=true) (last visited February 23, 2021).

<sup>331</sup> Ibid.

<sup>332</sup> Ibid.

<sup>333</sup> <http://www.fldoe.org/em-response/distance-learning.stml> (last visited February 18, 2021).

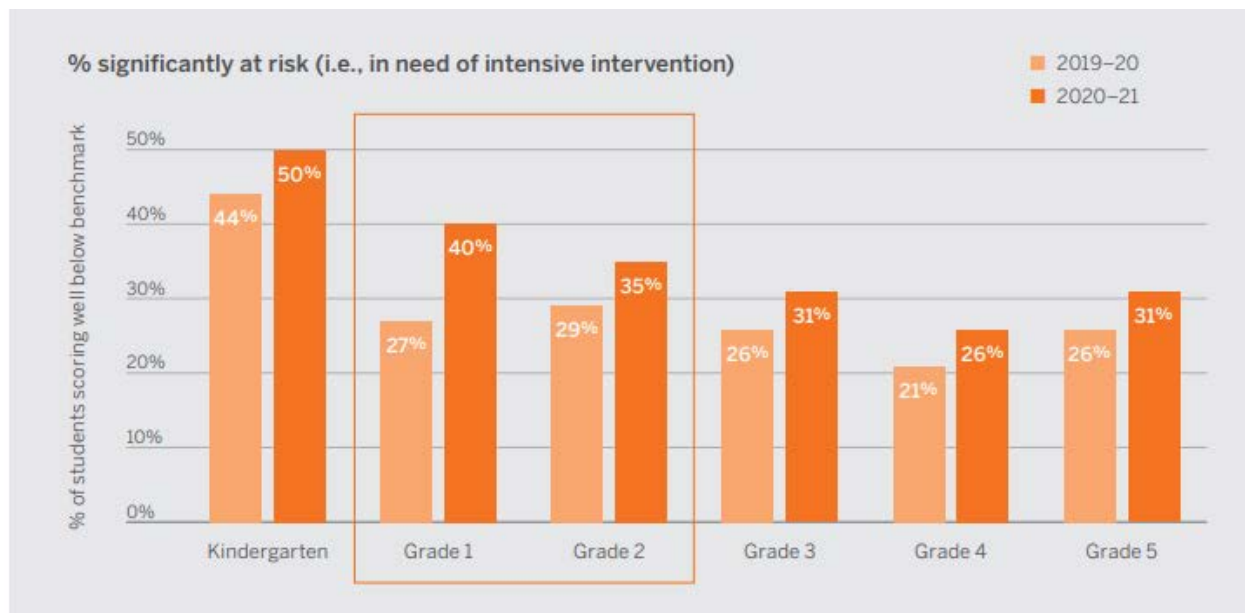
<sup>334</sup> <https://www.nytimes.com/2020/04/23/education/learning/coronavirus-teachers-students-remote-learning.html> (last visited February 16, 2021).



suffering the most.”<sup>335</sup> One of the largest school districts in the nation, Fairfax County in Virginia found that failing grades have nearly doubled from last year.<sup>336</sup>

For the students who have not been attending school in person or virtually, they will have a herculean task making up lost ground. In middle school or high school, additional absences have been shown to lead to lower achievement and test scores.<sup>337</sup> These absences have also shown to cause lower high school graduation rates of eight percentage points.<sup>338</sup>

On early grade level tests of 1.2 million students across the United States, the share of first graders not hitting benchmarks jumped from 27% last year to 40% this year, a 48% increase. Among second graders, it increased from 29% to 35%.<sup>339</sup>



<sup>335</sup> <https://www.nbcsandiego.com/news/national-international/schools-confront-off-the-rails-numbers-of-failing-grades/2463529/> (last visited February 18, 2021).

<sup>336</sup> <https://www.voanews.com/usa/us-schools-confront-rails-numbers-failing-grades#:~:text=American%20school%20districts%20from%20coast,disadvantaged%20students%20suffering%20the%20most> (last visited February 17, 2021).

<sup>337</sup> Goodman, J., NBER Working Paper Series, Flaking Out: Student Absences and Snow Days as Disruptions of Instructional Time, Available at [https://www.nber.org/system/files/working\\_papers/w20221/w20221.pdf](https://www.nber.org/system/files/working_papers/w20221/w20221.pdf) (last visited February 17, 2021).

<sup>338</sup> Liu, Jing, Monica Lee, and Seth Gershenson. (2020). The Short- and Long-Run Impacts of Secondary School Absences. Available at <https://www.iza.org/publications/dp/12613/the-short-and-long-run-impacts-of-secondary-school-absences#:~:text=We%20find%20that%20absences%20in,time%20graduation%20by%208%25%2C%20and> (last visited February 17, 2021).

<sup>339</sup> [https://amplify.com/wp-content/uploads/2020/12/mCLASS\\_Flyer\\_CovidBrief-LearningLoss\\_120420.pdf](https://amplify.com/wp-content/uploads/2020/12/mCLASS_Flyer_CovidBrief-LearningLoss_120420.pdf) (last visited February 26, 2021).

According to an October 2020 survey by RAND Corporation’s American Educator Panels,<sup>340</sup> the majority of U.S. schools were continuing to use remote instruction, either totally or in a hybrid format.<sup>341</sup> The figure below, illustrates the differences between how instruction is being implemented by all schools responding to the survey; schools with high poverty level; and schools with large minority populations.<sup>342</sup> Florida schools remain open for parents who choose to send their children for in-person learning, however remote instruction and hybrid models have been developed by the districts.<sup>343</sup>

Studies have warned student performance, particularly for students who are already academically struggling, can seriously suffer in online courses.<sup>344</sup> Early in the pandemic, it was believed keeping schools open would drastically increase the positivity rate of the virus.<sup>345</sup> <sup>346</sup> A surge in coronavirus cases was expected after reopening schools in August 2020.<sup>347</sup> However, USA TODAY did an analysis and found the coronavirus positivity rate among children 5 to 17 years of age declined through late September.<sup>348</sup> The findings showed surges in cases was actually from college age adults, not secondary school age children.<sup>349</sup> When the anticipated spike in cases did not occur in primary and secondary schools, more than half of the families with school age children in Florida sought to resume in-person instruction.<sup>350</sup>

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<sup>340</sup> [https://amplify.com/wp-content/uploads/2020/12/mCLASS\\_Flyer\\_CovidBrief-LearningLoss\\_120420.pdf](https://amplify.com/wp-content/uploads/2020/12/mCLASS_Flyer_CovidBrief-LearningLoss_120420.pdf) (last visited February 15, 2021).

<sup>341</sup> [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR100/RR168-4/RAND\\_RRA168-4.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR100/RR168-4/RAND_RRA168-4.pdf) (last visited February 19, 2021).

<sup>342</sup> Ibid.

<sup>343</sup> <https://www.fldoe.org/core/fileparse.php/5673/urlt/DOEOrder2020-EO-07.pdf> (last visited February 17, 2021).

<sup>344</sup> Di Xu & Shanna S. Jaggars (2014) Performance Gaps between Online and Face-to-Face Courses: Differences across Types of Students and Academic Subject Areas, The Journal of Higher Education available at <https://ccrc.tc.columbia.edu/publications/adaptability-to-online-learning.html> (last visited February 18, 2021).

<sup>345</sup> <https://www.sciencemag.org/news/2020/03/does-closing-schools-slow-spread-novel-coronavirus> (last visited February 18, 2021).

<sup>346</sup> <https://www.brookings.edu/blog/the-avenue/2020/03/20/as-classes-move-online-during-covid-19-what-are-disconnected-students-to-do/> (last visited February 18, 2021).

<sup>347</sup> <https://www.usatoday.com/story/news/investigations/2020/09/28/florida-schools-reopened-en-mass-feared-covid-surge-hasnt-followed/3557417001/> (last visited February 15, 2021).

<sup>348</sup> Ibid.

<sup>349</sup> Ibid.

<sup>350</sup> Ibid.

## Appendix A

### COVID-19: summary of cases and monitoring

Data through Feb 27, 2021 verified as of Feb 28, 2021 at 09:25 AM

Data in this report are provisional and subject to change.

Cases: people with positive PCR or antigen test result	
<b>Total cases</b>	<b>1,909,221</b>
Florida residents	1,874,154
Non-Florida residents	35,067
<b>Type of testing</b>	
Florida residents	1,874,154
Positive by BPHL/CDC	69,061
Positive by commercial/hospital lab	1,805,093
PCR positive	1,523,359
Antigen positive	350,795
Non-Florida residents	35,067
Positive by BPHL/CDC	866
Positive by commercial/hospital lab	34,201
PCR positive	24,236
Antigen positive	10,831
<b>Characteristics</b>	
Florida residents hospitalized	79,344
Florida resident deaths	30,852
Non-Florida resident deaths	554
Hospitalized counts include anyone who was hospitalized at some point during their illness. It does not reflect the number of people currently hospitalized.	
More information on deaths identified through death certificate data is available on the National Center for Health Statistics website at <a href="http://www.cdc.gov/nchs/nvss/vsrr/COVID19/index.htm">www.cdc.gov/nchs/nvss/vsrr/COVID19/index.htm</a> .	

Cases: people with positive PCR or antigen test result	
<b>Risk factors for Florida residents</b>	
Traveled	14,867
Contact with a known case	722,245
Traveled and contact with a known case	20,272
Neither	1,116,770
No travel and no contact	217,821
Travel is unknown	652,374
Contact is unknown	411,437
Contact is pending	424,263
Travel can be unknown and contact can be unknown or pending for the same case, these numbers will sum to more than the "neither" total.	

## COVID-19: characteristics of 1,874,154 Florida resident cases

Data through Feb 27, 2021 verified as of Feb 28, 2021 at 09:25 AM

Data in this report are provisional and subject to change.

Age group	Cases		Hospitalizations		Deaths	
0-4 years	36,974	2%	525	1%	0	0%
5-14 years	115,034	6%	490	1%	5	0%
15-24 years	288,097	15%	1,964	2%	39	0%
25-34 years	325,813	17%	3,843	5%	157	1%
35-44 years	289,938	15%	5,801	7%	470	2%
45-54 years	285,625	15%	8,954	11%	1,150	4%
55-64 years	247,169	13%	13,404	17%	3,270	11%
65-74 years	156,307	8%	16,582	21%	6,536	21%
75-84 years	86,819	5%	16,546	21%	9,385	30%
85+ years	41,117	2%	11,229	14%	9,840	32%
Unknown	1,261	0%	6	0%	0	0%
<b>Total</b>	<b>1,874,154</b>		<b>79,344</b>		<b>30,852</b>	

Gender	Cases	
Female	979,817	52%
Male	880,566	47%
Unknown	13,771	1%
<b>Total</b>	<b>1,874,154</b>	

Ethnicity	Cases		Hospitalizations		Deaths	
Hispanic	594,679	32%	20,180	25%	7,115	23%
Non-Hispanic	897,293	48%	55,252	70%	21,576	70%
Unknown	382,182	20%	3,912	5%	2,161	7%
<b>Total</b>	<b>1,874,154</b>		<b>79,344</b>		<b>30,852</b>	

Race and ethnicity	Cases		Hospitalizations		Deaths	
White	1,046,112	56%	51,645	65%	22,456	73%
Hispanic	396,661	21%	14,298	18%	5,606	18%
Non-Hispanic	570,520	30%	35,719	45%	15,771	51%
Unknown	78,931	4%	1,628	2%	1,079	3%
Black	247,741	13%	16,517	21%	4,895	16%
Hispanic	14,319	1%	690	1%	198	1%
Non-Hispanic	212,581	11%	15,480	20%	4,518	15%
Unknown	20,841	1%	347	0%	179	1%
Other race	279,359	15%	8,908	11%	2,523	8%
Hispanic	140,856	8%	4,709	6%	1,131	4%
Non-Hispanic	95,303	5%	3,791	5%	1,172	4%
Unknown	43,200	2%	408	1%	220	1%
Unknown race	300,942	16%	2,274	3%	978	3%
Hispanic	42,843	2%	483	1%	180	1%
Non-Hispanic	18,889	1%	262	0%	115	0%
Unknown	239,210	13%	1,529	2%	683	2%
<b>Total</b>	<b>1,874,154</b>		<b>79,344</b>		<b>30,852</b>	

**Hospitalization** counts include anyone who was hospitalized at some point during their illness. It does not reflect the number of people currently hospitalized. **Other race** includes any person with a race of American Indian/Alaskan native, Asian, native Hawaiian/Pacific Islander, or other.

# Reemployment Assistance

Dane Eagle, *Executive Director, Florida Department of Economic Opportunity*

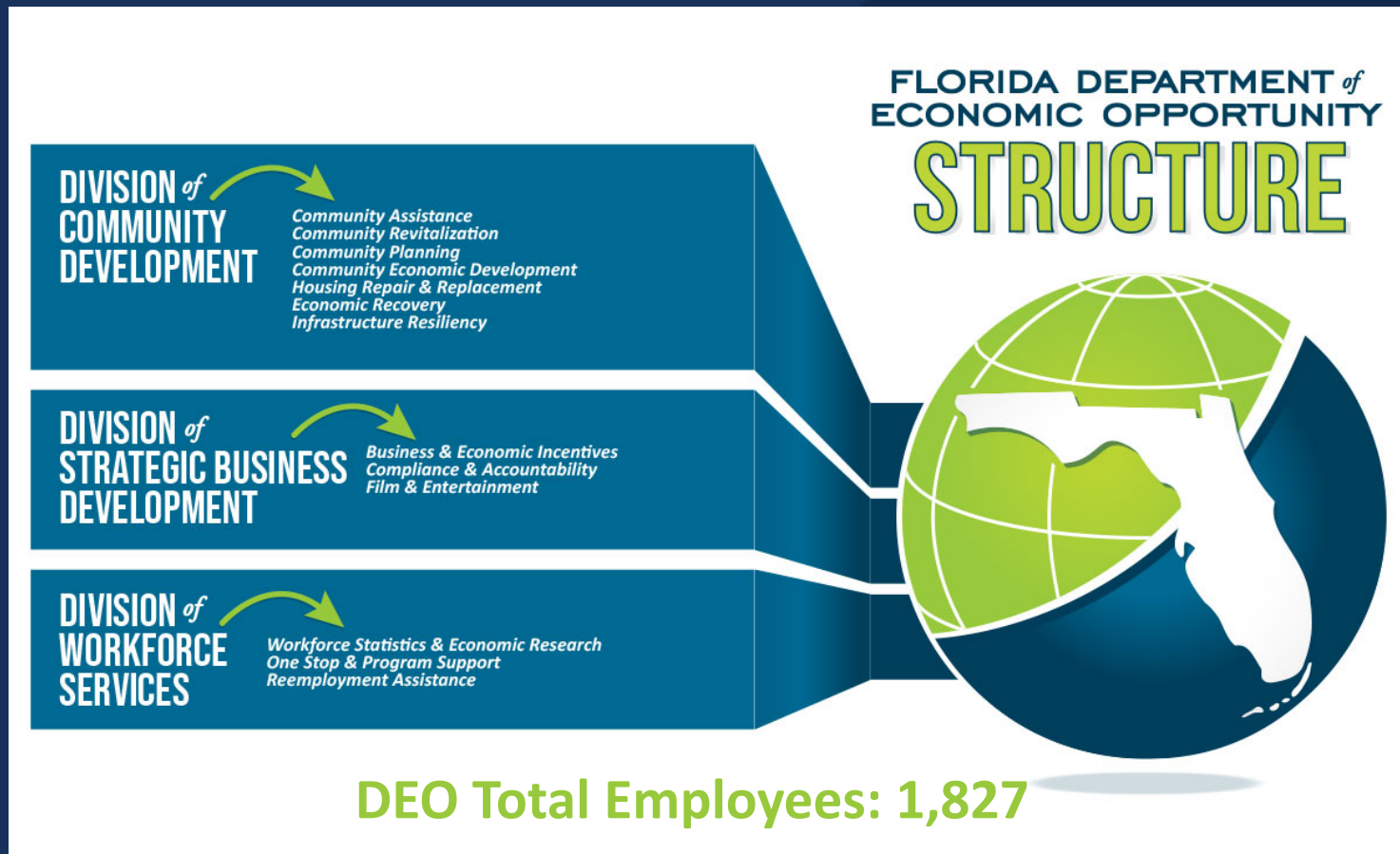
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Select Committee on Pandemic Preparedness and Response  
Florida Senate

March 1, 2021



# Department of Economic Opportunity



# Division of Workforce Services

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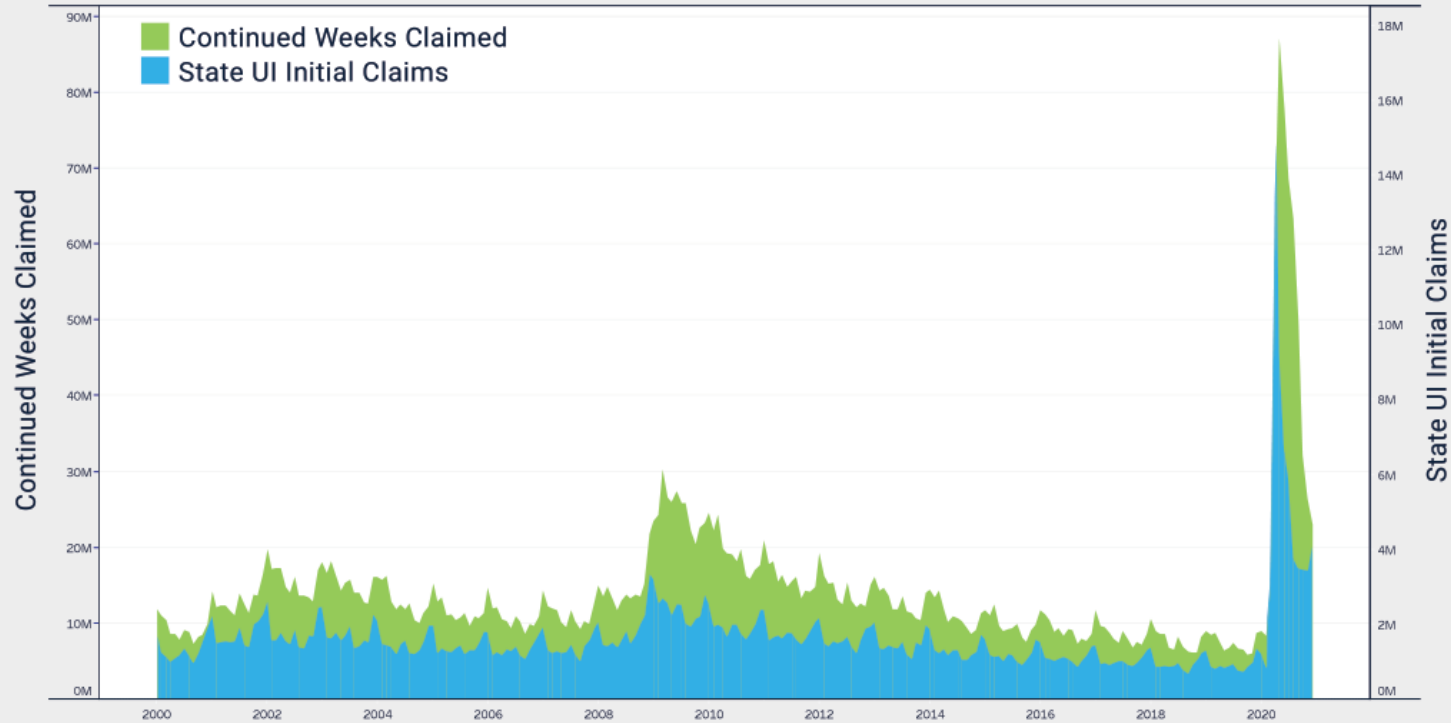
The **Division of Workforce Services**, formerly the Agency for Workforce Innovation (AWI) was established during DEO's formation. The Division of Workforce Services provides services to enhance the state's labor force and is comprised of three main programmatic bureaus including:

1. **Bureau of Reemployment Assistance**- the state's unemployment insurance program which provides temporary partial wage replacement benefits to qualified individuals who have lost their jobs through no fault of their own. As the largest bureau within the Division of Workforce Services, the Bureau of Reemployment Assistance has several office locations throughout Florida.
2. **Bureau of One-Stop and Program Support**- responsible for administering workforce programs and providing technical assistance and support to the CareerSource Florida network and the 24 Local Workforce Development Boards throughout the state.
3. **Bureau of Labor Market Statistics**- provides workforce, economic, and education data. The key data and information provided by this bureau assists communities across our state in making smart workforce and economic decisions and reports Florida's economic story to our federal and national partners.



# National Unemployment Insurance Claims

## REGULAR STATE UI BENEFITS INITIAL AND CONTINUED CLAIMS JANUARY 2000 - DECEMBER 2020



# COVID-19 Unemployment Impacts on States

50

States' call centers were overwhelmed

47

States experienced delays in processing Unemployment Insurance payments

27

States experienced delays implementing CARES Act extensions

19

States borrowed money to supplement Unemployment Insurance Trust Funds

50

States' Unemployment Insurance systems were overwhelmed

38

States' Unemployment Insurance systems were unavailable at one point

26

States' Unemployment Insurance systems were outdated

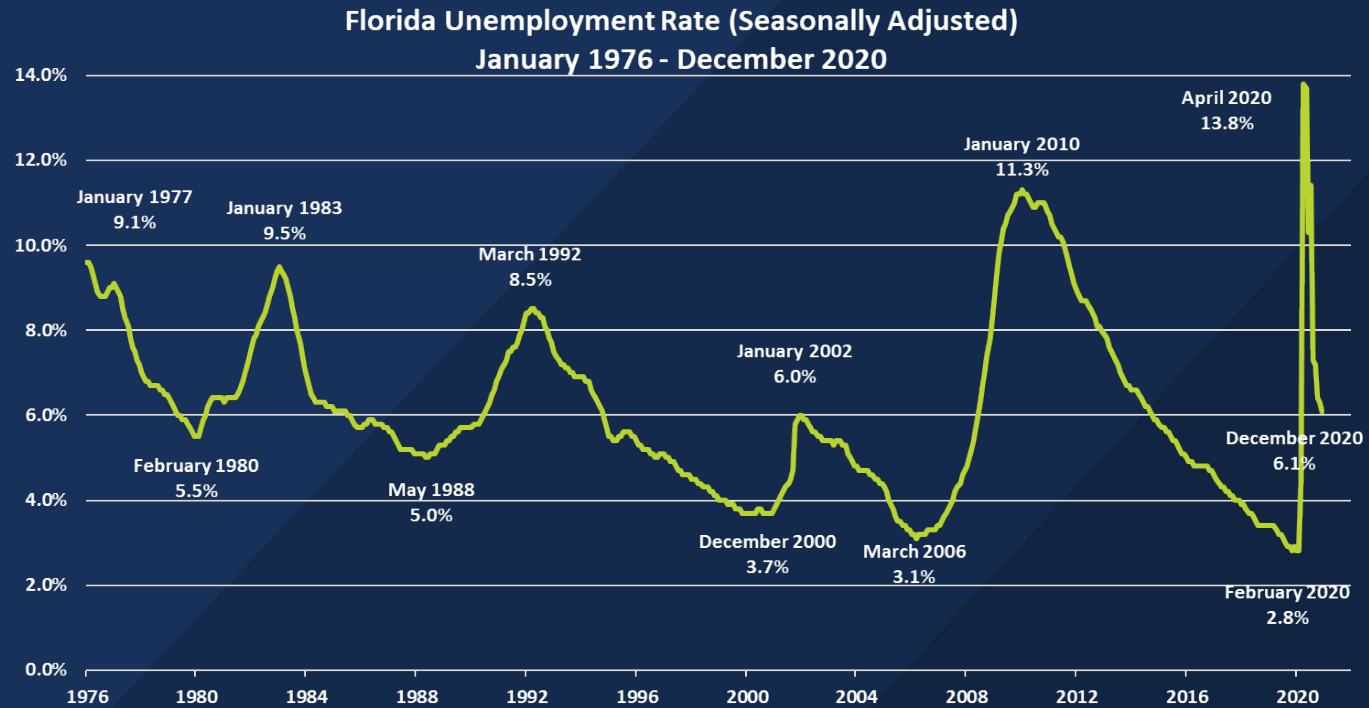
1

Florida is the only state out of the top nine largest populations to not borrow

# Pandemic Performance Summary

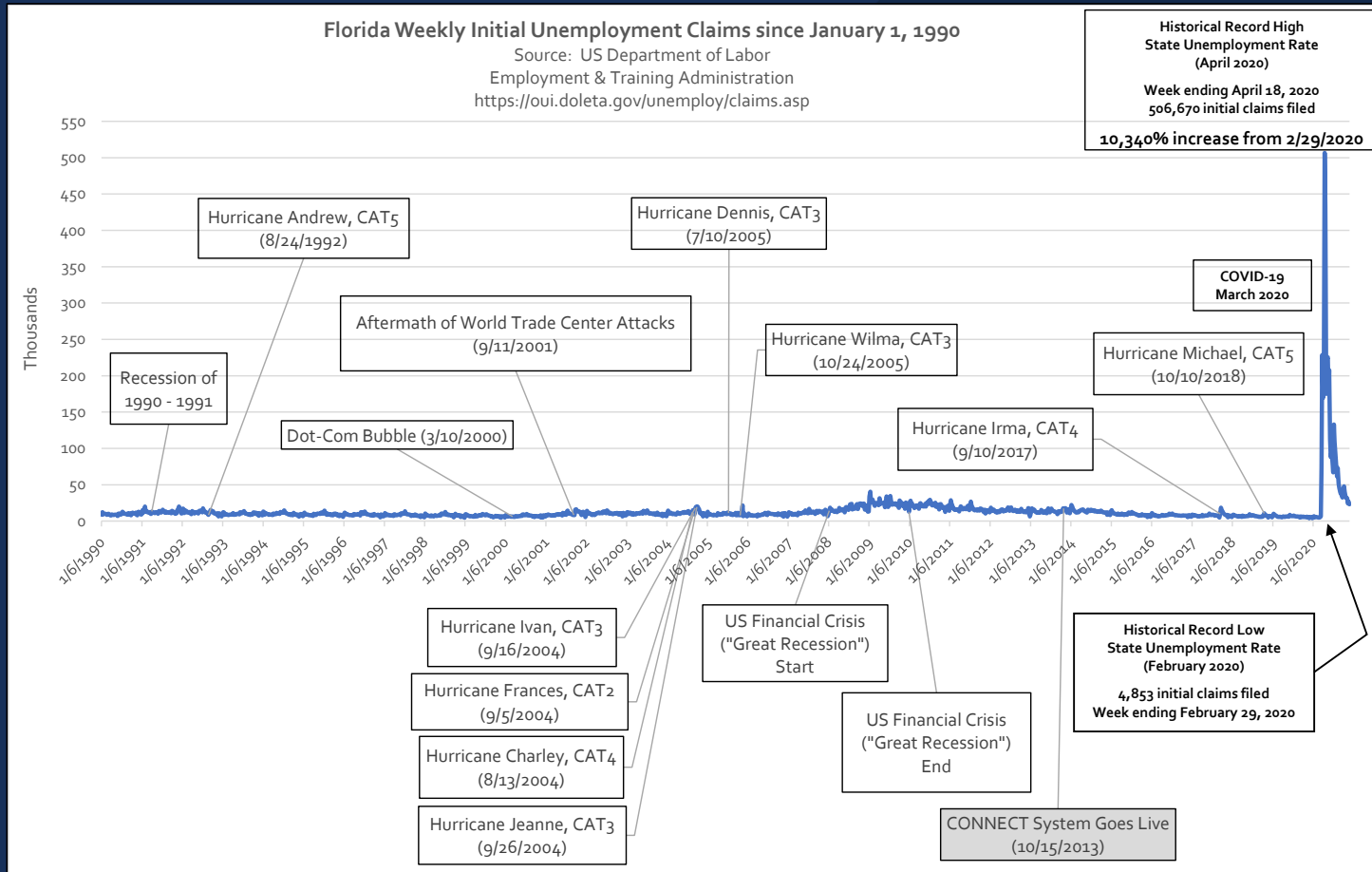
STATE	BASELINE * INITIAL CLAIMS (A)	HISTORIC HIGH INITIAL CLAIMS (B)	NUMERIC DIFFERENCE (C=B-A)	PERCENTAGE CHANGE (C/A) *100)
Florida	4,853	506,670	501,817	10,340.35%
Hawaii	1,020	53,102	52,082	5,106.08%
South Carolina	1,824	89,147	87,323	4,787.45%
Nevada	2,052	92,298	90,246	4,397.95%
Massachusetts	4,712	181,423	176,711	3,750.23%
California	34,979	1,058,325	1,023,346	2,925.60%
New York	14,144	394,701	380,557	2,690.59%
Texas	12,047	315,167	303,120	2,516.15%
United States	199,278	6,211,406	6,012,128	3,016.96%

# Florida Unemployment Rate



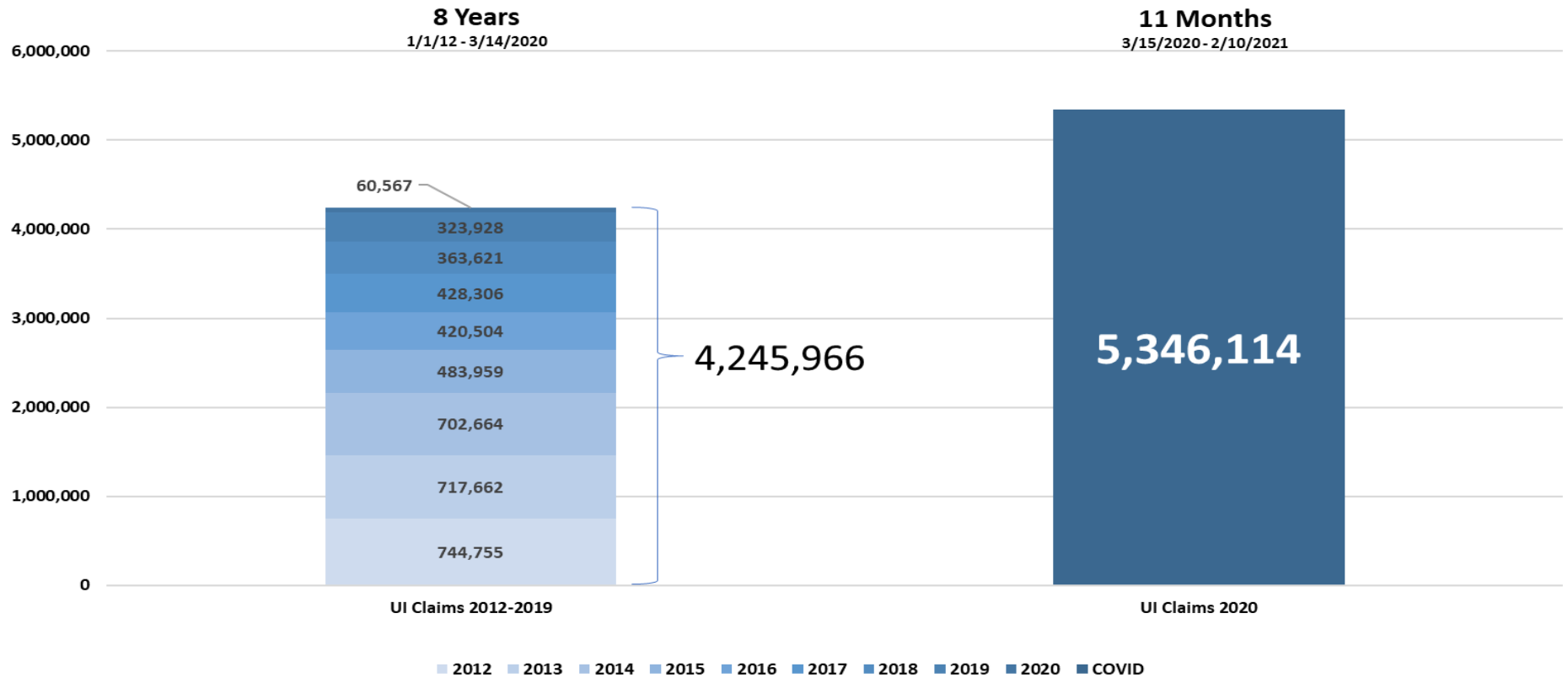
Source: Florida Department of Economic Opportunity, Bureau of Workforce Statistics and Economic Research, Local Area Unemployment Statistics (LAUS) Program.  
Prepared February 2021

# Florida Initial Unemployment Claims



# Pandemic Performance Summary

## Initial Unemployment Claims



# Reemployment Assistance Claims/Total Paid

STATE\*

**\$4,413,011,893**

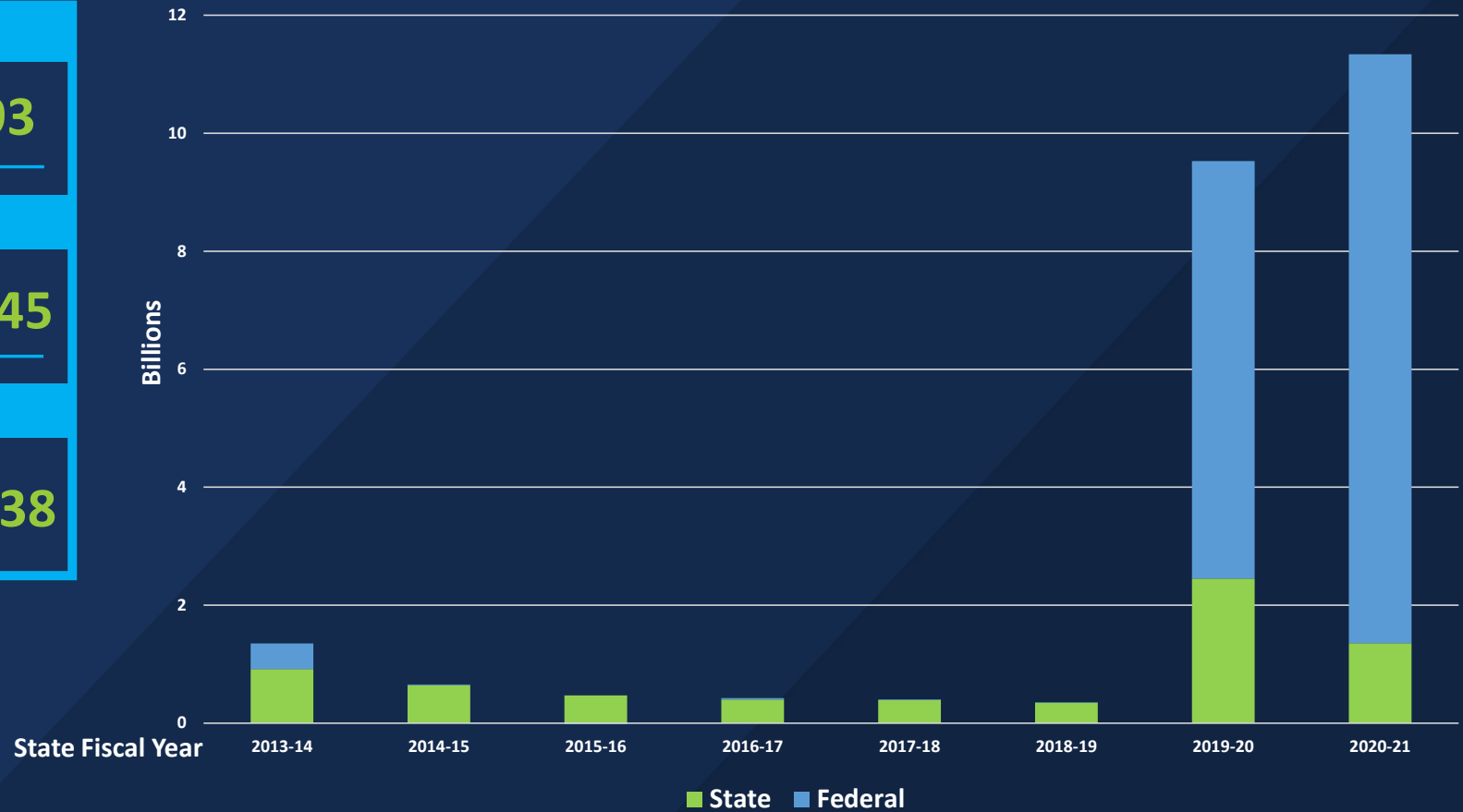
FEDERAL\*

**\$18,236,282,245**

TOTAL\*

**\$22,649,294,138**

*\*since March 15, 2020*





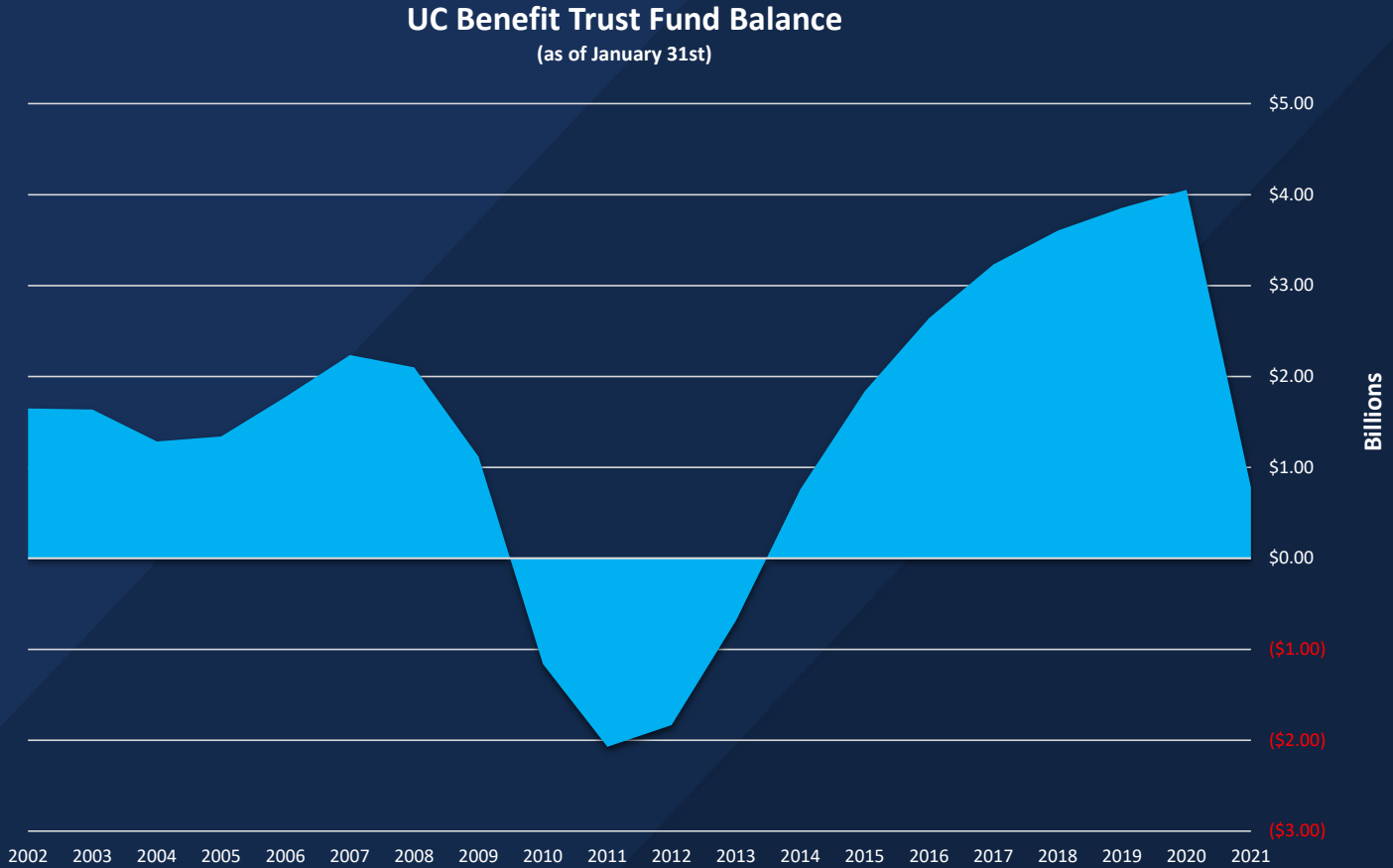
# Trust Fund Balance 2002-2021

JANUARY 2020

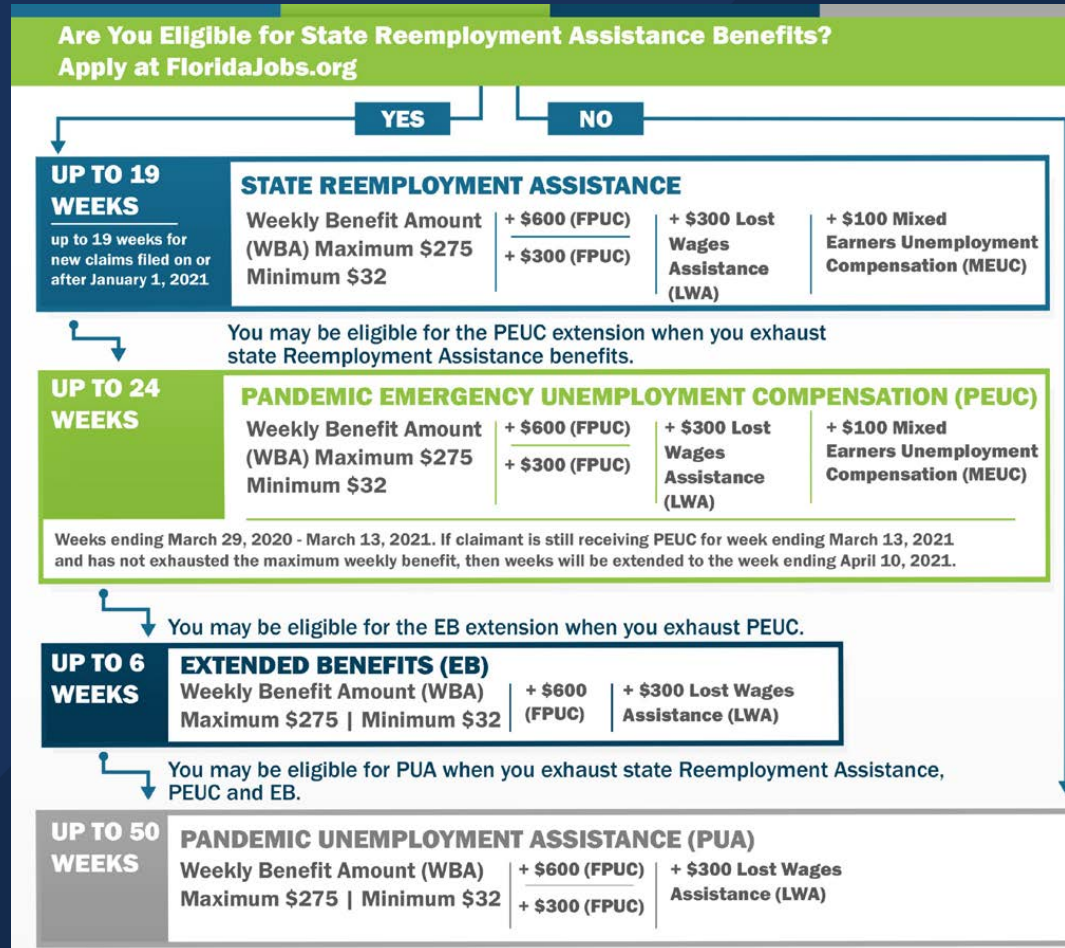
**\$4,053,594,025**

JANUARY 2021

**\$777,528,257**



# Overview of Reemployment Assistance Programs



# Reemployment Assistance Processes

1

## FILE INITIAL CLAIM

- ONLINE, MOBILE-FRIENDLY APPLICATION

2

## VERIFICATION

- IDENTITY
- EMPLOYER
- WAGES
- OUT OF STATE FILING
- FRAUD
- PROGRAM ELIGIBILITY

3

## MONETARY DETERMINATION

- MONETARY ELIGIBILITY
- WEEKLY BENEFIT AMOUNT

4

## ADDITIONAL DETERMINATION

- AVAILIBILIY
- ABILITY
- REPORTING REQUIREMENTS
- RETURN TO WORK
- QUIT/DISCHARGE

5

## ON GOING ACTIVITIES

- FRAUD MONITORING
- TRANSITION TO NEW PROGRAMS
- APPEALS
- EMPLOYER CHARGING
- PERFORMANCE and QUALITY MONITORING

# History of CONNECT, as Provided by Independent Report

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- Florida's unemployment system is **administered by the Department using the CONNECT system, which was deployed in 2013** to provide a modernized, web-based system and to replace a mainframe system.
- The deployment of CONNECT was challenged with delays and cost overruns. As a result, a reduced-scope solution was deployed in 2013.
- Metrics for system performance were driven by claims submitted in 2012, a total of 744,755.
  - Stress tests for initial claims: 97 concurrent claimant sessions.
  - Stress tests for continued claims: 3,433 concurrent claimant sessions.
- Since the deployment of CONNECT, the Department has been focused on resolving a backlog of technical issues and adding required functionality while accumulating technical debt across 75 proprietary products that make up the CONNECT system.
- Florida is not the only state to experience challenges, according to the **National Association of State Workforce Agencies (NASWA)**, of the 24 states considered technically modernized, nearly a third are considering a re-modernization effort, and another third are engaged in re-modernization.
- Prior to COVID-19, the Department completed a self-assessment of the risk and technical debt of the CONNECT system and identified the need for enhancements to the system. These modernization plans were interrupted by the Pandemic.

# January 2020 – March 2020

## JANUARY 2020

### UNEMPLOYMENT

**2.8%**

### Over-the-Month Job Growth

**0.4%**

### Online Job Ads

**336,725**

### TRUST FUND BALANCE

**\$4,052,594,025**

### JANUARY and FEBRUARY

- Record low unemployment.
- Job growth.
- Increase in monthly Claims by over 500,000 causes repeated CONNECT crashes, contributing to up to four- hour wait times in CONNECT.

**170,414 Total Calls Offered**

**Individuals Accessing CONNECT- 101,312**

- DEO was working to downsize Reemployment Assistance staff.

### March

- Governor DeSantis issued Executive Order 20-52- declaring a state of emergency for entire state.
- Agreement signed with USDOL to execute CARES Act.
- CONNECT was unavailable.

**3,191,525 Total Calls Offered**

**Individuals Accessing CONNECT- 389,998**

**2019 Total: \$319,530,000 to 326,653 claimants**

**\$11,439,399 to 22,923 Claimants**

- Built cloud web servers to increase CONNECT efficiency and scalability.
- Increased capacity with SSA and NASWA to verify claimant data.
- Repurposed non-production equipment for CONNECT production.
- Increased database infrastructure resources; Super SAN increases database efficiency.
- Placed large production tables into memory for faster processing.
- Purged older data from database tables.

## April 2020

### UNEMPLOYMENT

**13.8%**

### Over-the-Month Job Growth

**-12.1%**

### Online Job Ads

**262,339**

### TRUST FUND BALANCE

**\$3,913,207,198**

## APRIL

- Claimants were unable to apply in CONNECT because of system crashes.
- DEO staff were overwhelmed by the influx of calls, emails, and workload to process claims.
- Claimant verification issues began to arise creating backlogs within Federal and state identity verification procedures and processes.

**8,604,428 Total Calls Offered**

**Individuals Accessing CONNECT- 1,128,769**

**\$592,638,151 to 425,570 Claimants**

- On April 1, DEO, at the direction of Governor DeSantis, announced the waiving of the waiting week, work search, and work registration reporting requirement.
- The Department created and deployed a new mobile-friendly application so claimants could file for assistance outside of CONNECT.
- Created IVR-dedicated servers and expanded Call Center.
- Implemented paper application and distributed publicly.
- Installed 82 new servers to increase capacity from 20,000 to 120,000 simultaneous connections in CONNECT
- Began adding additional staff through call center vendors and local CareerSource boards.
- Created cloud server to expand call center capacity.
- Reemployment Assistance Dashboard created.
- Coordinated efforts with the Department of Management Services to enhance telecommunications capacity.
- Established a virtual desktop support and workflow processes to serve an estimated 1 million Floridians impacted by COVID-19.
- Began processing and issuing payments for waiting week, Federal Pandemic Unemployment Compensation (FPUC), and Pandemic Unemployment Assistance (PUA).
- Worked with JP Morgan to provide checks 1 day faster to claimants.

# May 2020- August 2020

## July 2020

### UNEMPLOYMENT

**11.4%**

### Over-the-Month Job Growth

**0.9%**

### Online Job Ads

**263,082**

### TRUST FUND BALANCE

**\$1,838,507,699**

## MAY – JUNE

- Network drops, resulting in performance degradation, claimant session disconnects, and queue wait times.
- Claimants were beginning to request claims to be backdated.
- Phase 1- Reopening Florida begins

**14,855,996 Total Calls Offered**

**Individuals Accessing CONNECT- 1,601,107**

**\$8,326,684,444 to 1,603,103 Claimants**

- On May 8, Governor DeSantis again directed DEO to waive the work search and work registration requirements for claimants.
- Expanded system monitoring to proactively capture potential performance issues.
- PUA monetary Determination module goes live.
- Identity verification for “locked” accounts through ID.me.
- Began correcting dates for applications submitted through the new online application.
- On May 30, Governor DeSantis again directed DEO to waive the work search and work registration requirements for claimants.
- Installed Virtual Waiting Room for CONNECT to control traffic.
- Installed virtual waiting room for IVR that allowed control of call queue traffic and wait time expectations.
- Moved load balancer to cloud improved processing efficiency, reducing wait times.
- On June 13, Governor DeSantis again directed DEO to continue waiving the work search and work registration requirements for claimants.

## JULY – AUGUST

- Claimants were unable to upload supporting documentation resulting in delay of processing and schedule of hearings.
- Addressing backlogs became a major focus.

**8,423,361 Total Calls Offered**

**Individuals Accessing CONNECT- 1,177,973**

**\$14,592,426,997 Paid to 1,932,677 Claimants**

- On July 3, Governor DeSantis again directed DEO to continue waiving the work search and work registration requirements for claimants.
- Updated code and increased system resources resolved the document upload issue.
- Implemented Application Performance Management tools to more effectively pinpoint performance issues in code and with the system.
- 1,500 additional call center staff trained. They began assisting claimants with filing applications and requesting benefit payments.
- FPUC payments began to reflect in CONNECT accounts.
- On August 1, Governor DeSantis again directed DEO to continue waiving the work search and work registration requirements for claimants.
- 95% of eligible claims were processed.
- Leveraged robotic process automation technology to automate manual workflows.



# September 2020- December 2020

## October 2020

### UNEMPLOYMENT

**6.4%**

### Over-the-Month Job Growth

**0.5%**

### Online Job Ads

**323,828**

### TRUST FUND BALANCE

**\$1,113,375,195**

## SEPTEMBER – OCTOBER

- Department needed to issue LWA payments.
- DUA needed updating in CONNECT to reflect COVID-19 and Hurricane Sally.
- Return to work issues were created by error.

**2,848,236 Total Calls Offered**

**Individuals Accessing CONNECT- 1,397,685**

## NOVEMBER – DECEMBER

- PEUC claims not backdating properly.
- Extended Benefits program needed to be introduced into CONNECT.

**2,980,485 Total Calls Offered**

**Individuals Accessing CONNECT- 1,263,951**

**\$18,002,421,222 Paid to 2,078,304 Claimants**

- On September 5, Governor DeSantis again directed DEO to continue waiving the work search and work registration requirements for claimants.
- Began paying benefits for the Lost Wages Assistance program.
- Implemented services to expedite processing of mail correspondence.
- Return to Work build was deployed to only create and issue if the claimant request weeks after their return-to-work date.
- Implemented a build that will set the PUA effective date to the Sunday after the PEUC exhaust week.
- Implemented the FPUC and LWA payment summary screen.

**\$19,848,404,482 Paid to 2,166,640 Claimants**

- Prepared for potential expiration of the CARES Act.
- Increased Self-Service Options to provide a flexible solution to increase capacity.
- Implemented Extended Benefits (EB) Program phases 1 & 2.
- Fixed PEUC backdating issue to update all effective dates appropriately.
- On December 1, Governor DeSantis again directed DEO to continue waiving the work search and work registration requirements for claimants.

# January 2021- February 2021

## December 2020

UNEMPLOYMENT  
**6.1%**

Over-the-Month  
Job Growth  
**0.2%**

Online Job Ads  
**370,983**

TRUST FUND  
BALANCE  
**\$866,112,320**

### JANUARY

- Worked to implement the CARES Act extensions.
- Added extending weeks for claimants who had not previously exhausted benefits.
- Issue 1099-G Forms for 2020 tax year.

**1,934,490 Calls**

**Individuals Accessing CONNECT- 829,347**

**\$21,412,042,352 Paid to 2,216,551 Claimants**

- On January 5, Governor DeSantis again directed DEO to continue waiving the work search and work registration requirements for claimants through February 27.
- Extended program end dates for PUA and PEUC.
- Reinstated FPUC payments (\$300).
- Extended weeks available for PUA and PEUC recipients and updated logic to ensure claimants received payment under correct program.
- Added new functionality to allow PUA claimants to upload documentation required under the CARES Act extension.
- Published a form to streamline claimant requests related to 1099-G forms.
- Developed process to automate processing duplicate form requests.

### FEBRUARY\*

- Continuing to implement CARES Act extensions, including the Mixed Earner Unemployment Compensation (MEUC) program.
- Noticed significant uptick in new claims submitted.

**2,004,003 Calls**

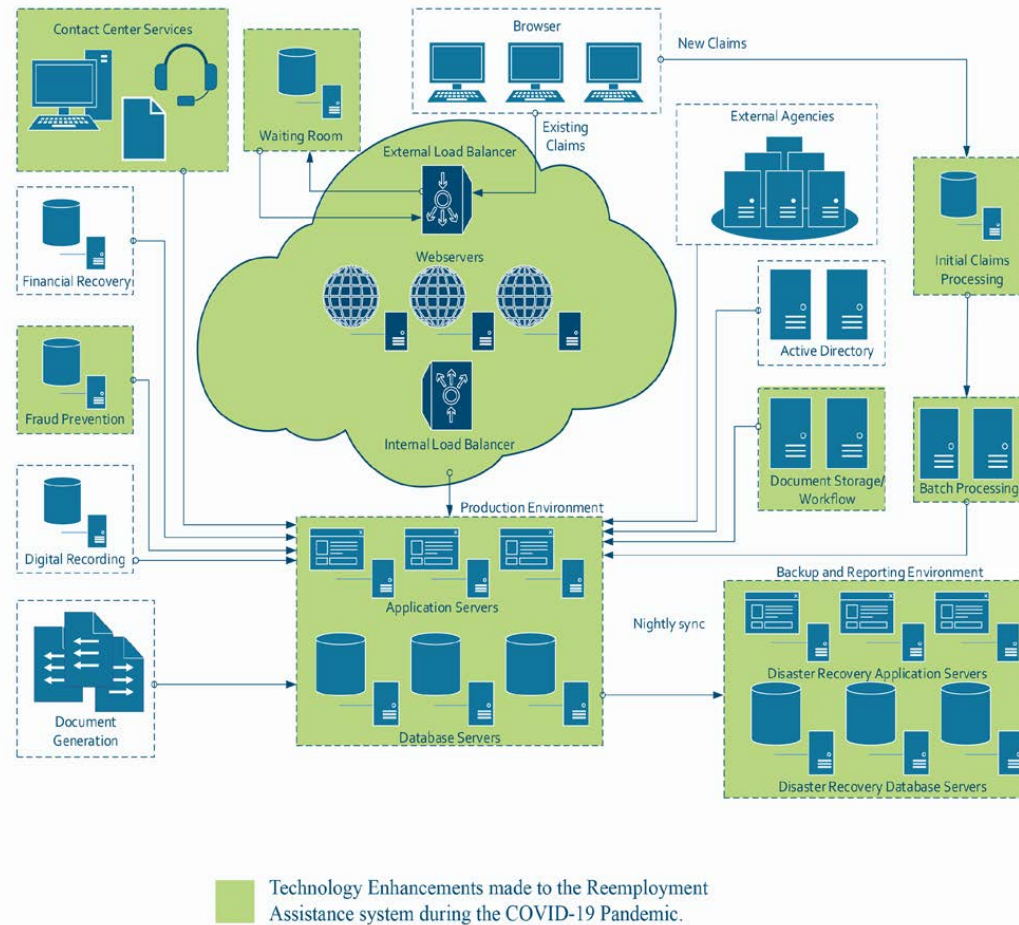
**Individuals Accessing CONNECT – 947,566**

\*Data provided as of 2/25/21

**\$23,109,214,183 Paid to 2,294,298 Claimants**

- In response to a sudden increase in suspected fraudulent activity, DEO expanded its partnership with ID.me to deploy their identity verification systems to the new application for new claimants.
- Increased CONNECT capacity at disaster recovery site to mirror the increases made at State Data Center.
- Prepared Mixed Earner Unemployment Compensation (MEUC) to launch in early March.
- Launched new form and streamlined process for reporting fraud and identify theft.
- Worked with USDOL to develop estimates for initial claims filed in January.
- Soft launched a new online chat feature with Reemployment Assistance Customer Service representatives.

# Reemployment Assistance System Overview



# Independent Report: Key Findings

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1. The Department continues to perform tirelessly to ensure benefits are provided to claimants.
2. The CONNECT system was not built to process the volume of claims received during the pandemic.
3. Substantial investments were made during 2020 to stabilize and scale out the system.
4. Those investments resulted in necessary increases to the annual Reemployment Assistance IT base budget.
5. Additional cloud migration investment is needed to realize performance and cost optimization.
6. Software architecture investment is needed to enable timely implementation of use-focused services.
7. Business Process Optimization (BPO) and user interface investment is necessary to streamline the user experience.

# Independent Report: Summary of Findings

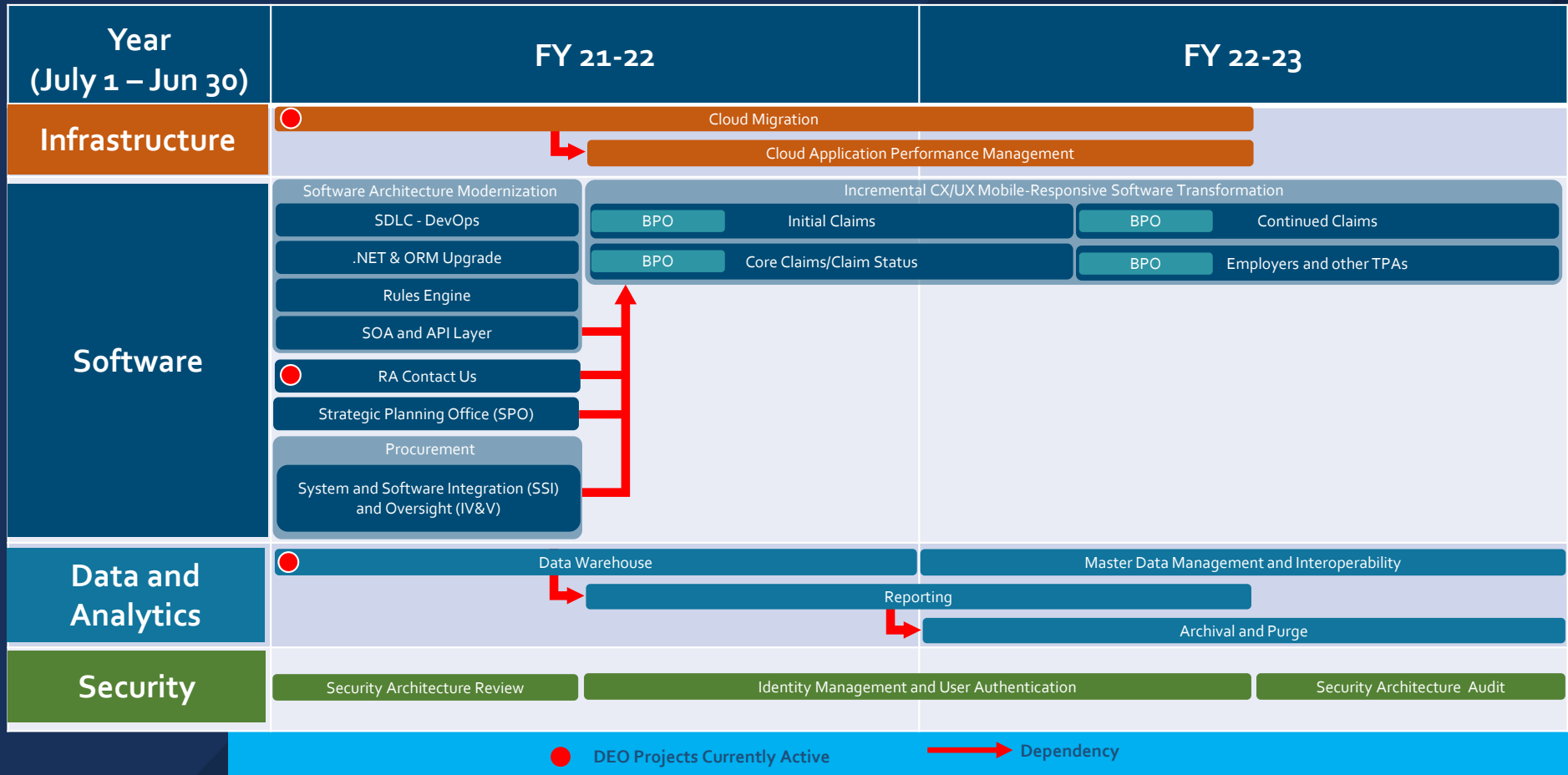
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- The following four options are alternatives to the state of Florida's modernization efforts:
  1. Retain existing system
  2. Custom development
  3. Commercial Off-The-Shelf (COTS)/Software as a Service (SaaS)
  4. Other state agency system
- The recommended alternative is a combination of alternatives two and three, utilizing COTS/SaaS where feasible while modernizing and enhancing the current Reemployment Assistance system in situations where COTS/SaaS solutions are not feasible.
- A cloud-based solution that enables timely enhancements and customizations provides the best alignment of business needs with technology optimization and flexibility moving forward.

# Strategic Initiatives

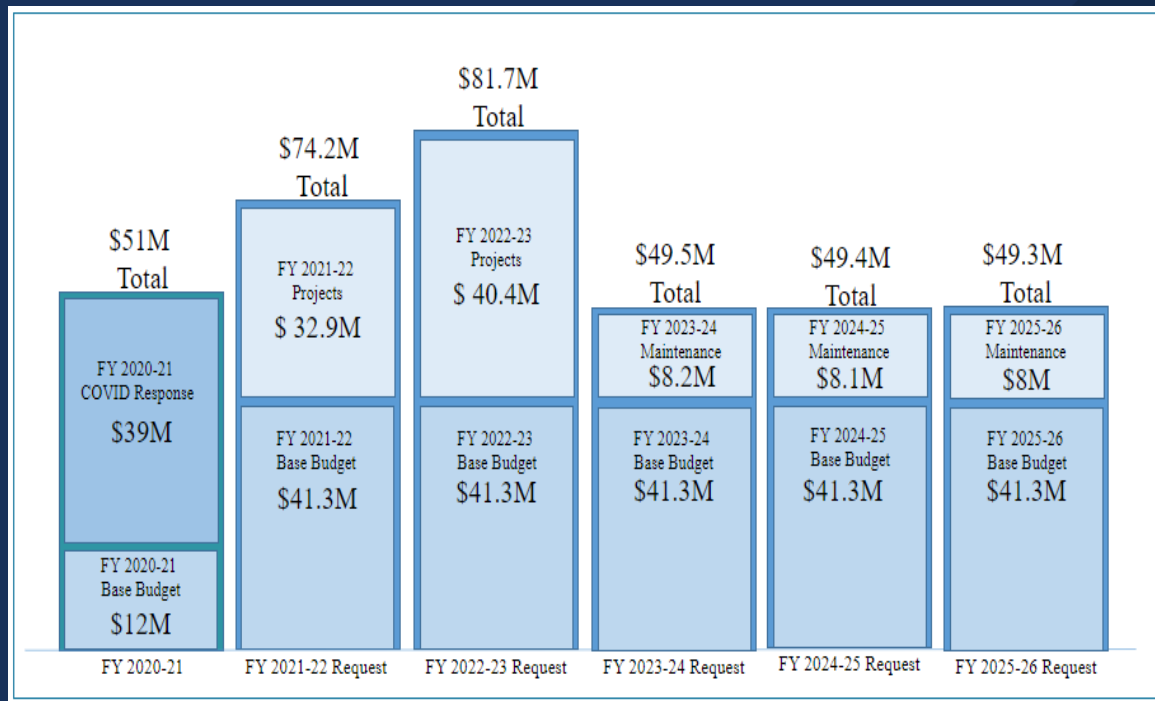
 Infrastructure	Implementation of modern, cloud-based infrastructure is critical to achieving agile business and technology change, efficient pricing models, and auto-scaling based on workload and demand.
 Software	Applications that utilize open standard, service oriented architecture (SOA) designs, and APIs to enable timely implementation of business driven, user experience (UX) focused services.
 Data & Analytics	Management of data to include standardization and de-duplication of data sources tracked in catalogs and defined in dictionaries enables cross program interoperability.
 Security	Security touches all other aspects of the pyramid from policies and procedures to security controls implemented in the infrastructure, software, and data layers.

# Project Roadmap





# 2021-22 Budget Request



- The Reemployment Assistance System budget was approximately \$12 million annually.
- DEO incurred an additional \$39 million in costs for the system due to pandemic response.
- Our anticipated FY 2021-22 costs for continued pandemic response is \$29 million while claims volumes remain high.
- The Department is requesting \$32.9 million in FY 2021-22 for Modernization projects to improve system performance and usability.

# Reemployment Assistance Proposed Legislation

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- Agency reorganization including the creation of the **Office of Economic Accountability and Transparency** to provide oversight on key agency initiatives and clearly communicate those efforts to the public.
- Implement a **modular cloud-based system** that is necessary for the efficient and effective operation and management of the Reemployment Assistance program.
- Create the **Reemployment Assistance Modernization Strategic Planning Office** within DEO to oversee the project as well as the continued modernization efforts of the state Reemployment Assistance program.
- Provide an **annual report** to the **Governor**, the **President of the Senate**, and the **Speaker of the House of Representatives**, by October 1, 2023, and every year thereafter, that includes a summary of the continuous modernization efforts and a three-year outlook of recommend modernization projects including project costs and timeframes for completion.
- Other **program and claims-processing changes** to promote efficiency and timeliness include removing the requirement that appeals hearing officers be licensed attorneys, decreasing the amount of time employers have to respond to a notice of claim, and requiring monetary reconsiderations to be completed before an appeal can be filed.
- **Remove burdensome reporting requirements** for victims of domestic violence.



# Thank You.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/1/21  
Meeting Date

\_\_\_\_\_  
Bill Number (if applicable)

Topic REEMPLOYMENT ASSISTANCE

\_\_\_\_\_  
Amendment Barcode (if applicable)

Name DANE EAGLE

Job Title EXECUTIVE DIRECTOR

Address 107 E MADISON ST  
Street

Phone 850-245-7298

TALLAHASSEE  
City

FL  
State

32308  
Zip

Email DANE.EAGLE@DEO.MYFLORIDA.COM

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Report  
Bill Number (if applicable)

Meeting Date

Topic DEO Payment Distribution Investigation

Amendment Barcode (if applicable)

Name R. Wade White

Job Title Unemployed DEO Recipient

Address 3045 W ORANGE AVE

Phone

Street

Tallahassee

FL

32310

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing 2 million people Deo has neglected to pay

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM**

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

3/1/2021

*Meeting Date*

report

*Bill Number (if applicable)*

Topic DEO Reemployment Assistance

*Amendment Barcode (if applicable)*

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.

Phone 850-321-9386

*Street*

Tallahassee

FL

32301

Email fcfep@yahoo.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Center for Fiscal and Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/1/21

Meeting Date

Bill Number (if applicable)

Topic Unemployment Presentation

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title

Address Street

Phone

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Rising

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/1  
Meeting Date

DEO Presentation  
Bill Number (if applicable)

Topic Unemployment

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title \_\_\_\_\_

Address 135 S. Monroe

Phone 224-6926

Street

Tallahassee

FL

32301

Email \_\_\_\_\_

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

# CourtSmart Tag Report

**Room:** KB 412

**Case No.:** -

**Type:**

**Caption:** Senate Select Committee on Pandemic Preparedness and Response

**Judge:**

**Started:** 3/1/2021 1:33:19 PM

**Ends:** 3/1/2021 3:30:42 PM **Length:** 01:57:24

1:33:19 PM	Sen. Burgess (Chair)
1:34:02 PM	TAB 1 - Presentation of Draft Report
1:35:25 PM	PK Jameson, Staff Director, Senate Select Committee on Pandemic Preparedness and Response
1:47:25 PM	Sen. Burgess
1:48:31 PM	Sen. Bracy
1:49:00 PM	Sen. Burgess
1:49:41 PM	Sen. Harrell
1:50:19 PM	Sen. Burgess
1:51:48 PM	TAB 2 - Presentation of the Florida Department of Economic Opportunity
1:52:39 PM	Dane Eagle, Executive Director, Department of Economic Opportunity
2:20:07 PM	Sen. Burgess
2:20:19 PM	Sen. Brandes
2:20:45 PM	D. Eagle
2:20:53 PM	Sen. Brandes
2:21:10 PM	D. Eagle
2:21:13 PM	Sen. Brandes
2:21:26 PM	D. Eagle
2:21:32 PM	Sen. Brandes
2:21:44 PM	D. Eagle
2:21:47 PM	Sen. Brandes
2:21:58 PM	D. Eagle
2:22:20 PM	Sen. Brandes
2:22:32 PM	D. Eagle
2:22:38 PM	Sen. Brandes
2:22:55 PM	D. Eagle
2:23:41 PM	Sen. Brandes
2:23:59 PM	D. Eagle
2:24:12 PM	Sen. Bracy
2:24:44 PM	D. Eagle
2:25:45 PM	Sen. Bracy
2:25:52 PM	D. Eagle
2:26:08 PM	Sen. Bracy
2:26:17 PM	D. Eagle
2:26:58 PM	Sen. Bracy
2:27:49 PM	D. Eagle
2:28:50 PM	Sen. Bracy
2:29:11 PM	Sen. Bradley
2:30:11 PM	D. Eagle
2:31:53 PM	Sen. Bradley
2:32:11 PM	D. Eagle
2:32:51 PM	Sen. Harrell
2:34:28 PM	D. Eagle
2:36:00 PM	Sen. Harrell
2:37:13 PM	D. Eagle
2:38:13 PM	Sen. Harrell
2:38:25 PM	D. Eagle
2:38:42 PM	Sen. Harrell
2:39:29 PM	D. Eagle
2:41:37 PM	Sen. Harrell
2:42:25 PM	D. Eagle
2:43:47 PM	Sen. Harrell
2:44:16 PM	Sen. Perry

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2:45:03 PM	D. Eagle
2:45:09 PM	Sen. Perry
2:45:51 PM	D. Eagle
2:46:53 PM	Sen. Ausley
2:48:32 PM	D. Eagle
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2:51:14 PM	Sen. Ausley
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2:53:00 PM	Sen. Book
2:53:57 PM	D. Eagle
2:54:29 PM	Sen. Book
2:54:55 PM	D. Eagle
2:56:27 PM	Sen. Book
2:56:41 PM	D. Eagle
2:57:21 PM	Sen. Pizzo
2:57:49 PM	D. Eagle
2:58:11 PM	Sen. Pizzo
2:58:15 PM	D. Eagle
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2:58:34 PM	D. Eagle
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3:11:59 PM	D. Eagle
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3:12:20 PM	D. Eagle
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3:18:54 PM	D. Eagle
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3:19:24 PM	D. Eagle
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3:22:19 PM	D. Eagle
3:23:14 PM	Sen. Bracy
3:23:20 PM	Sen. Burgess
3:23:28 PM	R. Wade White, Unemployed DEO Recipient
3:25:02 PM	Karen Woodall, Executive Director, Florida Center for Fiscal and Economic Policy
3:26:48 PM	Ida V. Eskamani, Florida Rising
3:26:50 PM	Sen. Pizzo
3:26:54 PM	Sen. Burgess
3:26:55 PM	Sen. Pizzo
3:27:01 PM	Sen. Burgess
3:27:11 PM	I. Eskamani
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