

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	HB 1169	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Powell and others	115 Y's	0 N's
COMPANION BILLS:	CS/SB 1288; CS/CS/HB 775; CS/SB/ 608	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

HB 1169 passed the House on March 8, 2016, as CS/SB 1288 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on March 10, 2016.

The bill provides clarification to the process utilized by The Division of Emergency Management (DEM), to effectively mobilize resources and conduct activities to guide and support emergency management efforts. The bill:

- Defines the term “activate” as “the execution and implementation of the necessary plans and activities required to mitigate, respond to, or recover from a potential or actual state of emergency or disaster declared pursuant to this chapter and the state comprehensive emergency management plan which specifies levels of activation.”
- Directs DEM to establish a statewide system to facilitate the transportation and distribution of essentials throughout the state during times of emergency. The term “essentials” means any goods that are consumed or used as a direct result of an emergency or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.
- Requires DEM to develop a system to certify persons, both before and after a declaration of emergency, who transport or distribute essentials in commerce. DEM may certify only a person who routinely transports or distributes essentials.
- Directs DEM to create an easily recognizable indicium of certification to assist local officials’ efforts in determining who has access to an area. Each certification may last no longer than one year, but may be renewed so long as criteria for certification continue to be met.
- States that law enforcement officers are not prohibited from specifying the permissible route of ingress or egress of certified individuals.

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

The bill was approved by the Governor on April 6, 2016, ch. 2016-198, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

State Emergency Management Act

The State Emergency Management Act¹ created the Florida Division of Emergency Management (DEM), conferred emergency powers upon the Governor, and provided for the rendering of mutual aid among political subdivisions of the state, other states, and with the Federal Government.² It was enacted with a declaration of state policy “that all emergency management functions of the state be coordinated to the maximum extent with comparable functions of the Federal Government... to the end that the most effective preparation and use may be made of the workforce, resources, and facilities of the nation for dealing with any emergency that may occur.”³

Florida Division of Emergency Management’s Comprehensive Emergency Management Plan

DEM is tasked with administering programs to rapidly apply all available aid to communities stricken by an emergency.⁴ In order to do so, DEM is responsible for preparing a state comprehensive emergency management plan (CEMP), “which shall be integrated into and coordinated with the emergency management plans and programs of the Federal Government.”⁵ The CEMP serves as the framework for disaster and emergency preparedness, response, recovery and mitigation activities.⁶

Florida Emergency Process

When an imminent or actual event threatens the state, the Director of DEM activates the State Emergency Response Team (SERT) and recommends that the Governor declare a state of emergency.⁷ The SERT provides management of response and recovery activities from the State Emergency Operations Center (SEOC), a permanent facility located in Tallahassee.⁸ The SEOC operates 24 hours a day, 7 days a week, but the level of staffing varies with the activation level.

The CEMP establishes three levels of activation as follows:

- Level 3 – Monitoring Activation
This level is a "monitoring" phase. Notification is made to those state agencies and Emergency Support Functions (ESFs) needed to take action as part of everyday responsibilities. The State Emergency Operation Center is staffed with State Warning Point Communicators and DEM staff.
- Level 2 – Partial Activation of SERT
This level is limited activation with all primary or lead ESFs notified. The State Emergency Operations Center will be staffed by DEM personnel and necessary ESFs.
- Level 1 – Full Activation

¹ Sections 252.31-.60, F.S.

² Section 252.32(1), F.S.

³ Section 252.32(2), F.S.

⁴ Section 14.2016, F.S.

⁵ Section 252.35(2)(a), F.S.

⁶ See Florida Division of Emergency Management (DEM), *State of Florida 2014 Comprehensive Emergency Management Plan (2014 CEMP)*, available at: <http://floridadisaster.org/comp.htm> (last visited January, 11, 2016).

⁷ *Id.*, at 18. Alternatively, the SERT can be activated by the Governor, or the SERT Chief. See 2014 CEMP, Section IV H, Activation of Emergency Facilities.

⁸ *Id.*, at 12-17.

This level is full scale activation and all primary and support agencies under the state plan are notified. The State Emergency Operations Center is staffed by DEM personnel and all ESFs.⁹

In order to receive federal assistance, the Governor of the state requesting funding must demonstrate direct execution of the State's emergency plan.¹⁰ The Federal Coordinating Officer (FCO) works in unison with the State Coordinating Officer (SCO) to coordinate the federal response to a state affected by a disaster or emergency.¹¹

Federal Emergency Declaration Process

When state and local resources are inadequate to effectively respond to a disaster or emergency, a state governor may request federal assistance.¹² The Governor's written request for federal assistance is made through the regional Federal Emergency Management Agency (FEMA) office after a preliminary damage assessment (PDA) has been completed.¹³ The PDA assesses the costs associated with emergency protective measures, debris removal, and damage to infrastructure.¹⁴ In the case of an emergency, Florida sends its PDA to Region IV, located in Atlanta, Georgia.¹⁵ However, if a severe or catastrophic event occurs, the Governor's request may be submitted prior to the PDA.

The Governor's request for federal assistance must demonstrate that appropriate action has occurred under state law and that the state's emergency plan has been initiated, among other things. After completion of the Governor's request, the President may activate federal programs to assist in the response and recovery effort. Not all federal programs are activated for every disaster.

These federal programs providing assistance are organized within the Emergency Support Functions (ESF) framework. The ESF provides the structure and coordination of federal interagency support in the event of an incident.¹⁶ The ESF is structured upon fifteen annexes. Within each annex, federal agencies that engage in work within that functional area are labeled as primary or support agencies. Primary agencies have significant roles, resources, or capabilities necessary for emergency support within the ESF annex. Support agencies assist primary agencies in responding to an incident or providing necessary resources.¹⁷

The needs of the state requesting assistance determine which federal programs are activated within the ESF framework.¹⁸ There are three activation levels and a "watch steady state" recognized by FEMA for the National Response Coordination Center. The federal levels of activation are described as follows:

- Watch Steady State
 - No event or incident anticipated.
- Level III
 - Requires moderate direct federal assistance.
 - Typically a recovery effort with minimal response requirements.

⁹ DEM, *State Emergency Operations Center Activation Levels*, available at: <http://www.floridadisaster.org/eoc/eoclevel.htm> (last visited Dec. 1, 2015).

¹⁰ Federal Emergency Management Agency (FEMA), *The Declaration Process*, available at: <https://www.fema.gov/declaration-process> (last visited Dec. 3, 2015).

¹¹ *Supra*, note 10 at 21-22.

¹² Public Law No: 100-707.

¹³ *Supra*, note 14.

¹⁴ DEM, *Public Assistance Program*, available at: <http://www.floridadisaster.org/Recovery/PublicAssistance/Index.htm> (last visited Dec. 3, 2015).

¹⁵ DEM, *Declaration Process – Request for Presidential Disaster Declaration*, available at:

<http://www.floridadisaster.org/Recovery/IndividualAssistance/DeclarationProcess/Index.htm> (last visited Dec. 3, 2015).

¹⁶ FEMA, *EMERGENCY SUPPORT FUNCTION ANNEXES: INTRODUCTION*, available at: www.fema.gov/pdf/emergency/nrf/nrf-esf-intro.pdf

¹⁷ FEMA, *Primary and Support Agencies*, available at: <https://emilms.fema.gov/IS293/MAO0103070text.htm>

¹⁸ *Supra*, note 14.

- Federal assistance may be limited to activation of only one or two ESF primary agencies.
- Level II
 - Requires a high amount of federal assistance.
 - Significant involvement of FEMA, and other federal agencies.
 - Possible deployment of initial response resources are required to support the needs of the affected state.
- Level II
 - An incident of such magnitude that has caused the response at the local, regional, or national-level to be completely overwhelmed or broken.
 - Requires an extreme amount of direct federal assistance for response and recovery efforts.
 - Major involvement of FEMA, other Federal agencies, and all primary ESF agencies are activated.¹⁹

Certification System

Currently, Florida does not provide a state certification for individuals or employers who assist in delivering essential goods or restoring utilities during times of emergency.

Each local jurisdiction may impose identification requirements and credentials beyond that which DEM suggests.²⁰ Over the past few years, the division's Office of Private Sector Coordination "formulated a working group to discuss...private sector re-entry."²¹ Statements at meetings and survey responses indicated that most local jurisdictions would allow access to disaster stricken areas if private sector employees and businesses possess three of the following items:²²

- A corporate identification card.
- A letter of authorization.
- A bill of lading/work order.
- A valid driver's license.

The items listed above are only a recommended list and each county may require additional documentation from persons who travel into disaster areas.

Effect of the Bill

Activation of State Emergency Response

This bill clarifies the term "activate" as it relates to the activation of the State Emergency Response Team (SERT) within the State Emergency Operations Center (SEOC) or at an alternate facility pursuant to the State Emergency Management Act. "Activate" is defined as "the execution and implementation of the necessary plans and activities required to mitigate, respond to, or recover from a potential or actual state of emergency or disaster declared pursuant to this chapter and the state comprehensive emergency management plan which specifies levels of activation."

The federal declaration process requires the state to 'execute' the state emergency plan in response to a disaster. Florida guidelines do not require the entire SEOC to be activated in order to respond to a

¹⁹ FEMA, *National Incident Support Manual*, available at: <https://www.fema.gov/media-library/assets/documents/24921> (last visited Dec. 9, 2015).

²⁰ DEM, *Senate Bill 608 Fiscal Analysis* (Nov. 2, 2016)(on file with the House Finance and Tax Committee).

²¹ DEM, *Statewide Re-entry Information*, available at http://www.floridadisaster.org/PublicPrivateSector/reentry_information.html (last visited Nov 18, 2015).

²² *Id.*

disaster, portions of the SERT can be activated to provide assistance under the Comprehensive Emergency Management Plan (CEMP). The definition is intended to clarify that activating portions of the SERT constitutes execution of the state emergency plan to aid in the federal reimbursement process.

Certification System

The bill directs DEM to establish a statewide system to facilitate the transportation and distribution of essentials throughout the state during times of emergency. The term “essentials” means any goods that are consumed or used as a direct result of an emergency or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.

DEM is required to develop a system to certify persons who transport or distribute essentials in commerce.

The system may allow for certification of persons both before and after a declaration of emergency. If requested by the employer, a certification of the employer constitutes a certification of the employer’s employees. DEM may certify only a person who routinely transports or distributes essentials.

DEM is directed to create an easily recognizable indicium of certification to assist local officials’ efforts in determining who has access to an area. Each certification may last no longer than one year, but may be renewed so long as criteria for certification continue to be met.

Any person certified by the division may not be required to obtain any additional certifications or meet any other requirements in order to transport essentials or assist in restoring utility services. Certified individuals will move throughout the state and throughout local communities at times of emergency. During times of curfew, certified persons are permitted to enter or remain in the curfew area for the limited purpose of distributing or assisting in the distribution of essentials.

The bill also states that law enforcement officers are not prohibited from specifying the permissible route of ingress or egress of certified individuals.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DEM notes that they are not aware of any fiscal impact due to defining the term “activate”.²³ DEM has stated that the certification requirements of the bill can be met with existing technology and staff and that no additional expenditures will be required.²⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

²³ DEM bill analysis of HB 1169. On file with the Appropriations Committee.

²⁴ DEM, Senate Bill 608 Fiscal Analysis (Nov. 2, 2015)(on file with the House Finance and Tax Committee.) The provisions of this proposed committee substitute are substantially similar to those in SB 608.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private sector distributors may have an easier time providing services in counties across the state.

D. FISCAL COMMENTS:

None.