

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Infrastructure and Security

BILL: CS/SB 834

INTRODUCER: Infrastructure and Security Committee and Senator Simmons

SUBJECT: Emergency Alerts

DATE: January 14, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	IS	Fav/CS
2.			ATD	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 834 establishes conditions and processes for activation of the Emergency Alert System and issuance of:

- Authorized Lockdown Alerts to public and private schools and child care facilities by local, jurisdictional law enforcement agencies; and
- Required Imminent Threat Alerts to the public by the Florida Department of Law Enforcement and display of such alerts on dynamic message signs along the State Highway System.

The fiscal impact to state and local government is indeterminate. See the “Fiscal Impact Statement” for additional details.

The bill takes effect October 1, 2020.

II. Present Situation:

The Emergency Alert System

Initiated in 1963, the Emergency Broadcast System’s purpose was to communicate to the nation using audible alerts, but the system did not make allowance for targeted messaging. In 1976, the system was upgraded to provide more efficient and accurate processing of alert receptions and expanded for state and local use during peacetime. In 2006, FEMA began modernization and

integration of the nation's alert system, the Integrated Public Alert Warning System (IPAWS),¹ providing a method for emergency alerts and warnings using the Emergency Alert System (EAS), wireless emergency alerts (WEAs), NOAA Weather Radio, and other public alerting systems from a single interface.²

The EAS requires broadcasters, cable television systems, wireless cable systems, satellite digital audio radio service providers, and direct broadcast satellite providers to provide the President of the United States with the ability, within ten minutes, to address the nation's people during a national emergency. Responsibility for implementation, maintenance and operations of the EAS at the federal level rests with the Federal Emergency Management Agency (FEMA), in partnership with the Federal Communications Commission (FCC) and the National Oceanic and Atmospheric Administration (NOAA). State and local authorities, in cooperation with the broadcast community, may also use the EAS to distribute important information for events such as weather emergencies, abducted children alerts, and local incident information targeted to specific areas.³ While the only time the federal government can override broadcast programming is for national activation of the system, state and local emergency management officials, broadcasters, and cable operators may decide what messages should be aired to the public.⁴

The State Emergency Communications Committee, a committee assigned to implement the EAS in a specific state,⁵ in conjunction with the Florida Division of Emergency Management, prepares and updates the Florida Emergency Alert System Operational Plan based on recommendations from state and county emergency management officials, the National Weather service, and the broadcast industry and cable operators. The Florida EAS Operational Plan purpose is to put in place a system for emergency officials to use to announce or transmit an emergency alert to the potentially impacted population.⁶

¹ Enhancement of IPAWS continues, the most recent round of which “require more than just the update to IPAWS. They require updates to wireless providers’ nationwide networks and customer phones, and to software that alerting authorities use to send alerts. The IPAWS Program Management Office (PMO) has tested and confirmed that wireless providers can receive enhanced WEA messages from IPAWS, but the nationwide availability for customers to receive enhanced WEA on their phones across all cellular networks will take additional time. The majority of software used by alerting authorities has also been upgraded and tested by the IPAWS PMO. However, not all alerting authorities may be ready to write alerts to fully use all of the enhanced WEA message content over the coming weeks and months. During the update period, IPAWS will accommodate all versions of WEA to ensure that the public will receive alerts for which their providers and phones are compatible.” See FEMA, *Integrated Public Alert & Warning System*, available at <https://www.fema.gov/integrated-public-alert-warning-system> (last visited January 3, 2020.)

² U.S. Department of Homeland Security, FEMA Fact Sheet, *Emergency Alert System*, available at https://www.fema.gov/media-library-data/1568381535406-c09fd7eb5736d73d8a8ababd134f39b1/EAS_Fact_Sheet_2019.pdf (last visited January 3, 2020).

³ *Id.*

⁴ See *State of Florida Emergency Alert System Plan*, p. 5, Approved October 2019, available at <http://fab.org/media/2019/11/State-of-Florida-EAS-Plan-Revised-11-11.pdf> (last visited December 23, 2019).

⁵ See the CommLawBlog, “*EAS Report to SECCs Due Nov. 6*,” October 25, 2017, p. 6, available at <https://www.commlawblog.com/2017/10/articles/cable/eas-report-to-seccs-due-nov-6/> (last visited December 23, 2019).

⁶ *Supra* note 4.

EAS Participation

Participation in the IPAWS using the EAS is not mandatory,⁷ but participation does necessitate compliance with a variety of general and technical requirements. For example, a participating commercial mobile service (CMS) provider of wireless emergency alerts (WEAs) must have equipment capable of receiving and transmitting what is called Common Alerting Protocol-formatted (CAP)-formatted alerts, which allow dissemination of emergency messages over a wide variety of existing and emerging public alerting systems.⁸ A participating CMS provider is required by federal regulation to receive and transmit four classes of alert messages as follows:

- Presidential alerts issued by the President (or designee) of the United States.
- Imminent threat alerts that meet a minimum value for each of the three following CAP elements:
 - Urgency: Immediate (*i.e.*, responsive action should be taken immediately) or Expected (*i.e.*, responsive action should be taken soon, within the next hour).
 - Severity: Extreme (*i.e.*, an extraordinary threat to life or property) or Severe (*i.e.*, a significant threat to life or property).
 - Certainty: Observed (*i.e.*, determined to have occurred or to be ongoing) or Likely (*i.e.*, has a probability of greater than 50 percent).
- Child abduction emergency/AMBER alerts:
 - Family abduction.
 - Nonfamily abduction.
 - Lost, injured, or otherwise missing.
 - Endangered runaway.
- Public safety messages, which may only be issued in connection with one of the above alerts.⁹

As another example of compliance required for EAS participation, public safety officials must have authority to alert the public of emergencies, which is determined by federal, state, and local laws. Generally, however, the following are eligible participant organizations: federal agencies and state, local, territorial, and tribal governments. Depending on their public safety mission, other public or private sector organizations may be eligible.¹⁰ As of December 16, 2019, FEMA lists 65 entities in Florida with completed alerting authority, and another 16 Florida organizations with alerting authority approval in process.¹¹

Dynamic Message Signs

The Florida Department of Transportation (FDOT) defines the term, “dynamic message signs,” also known as changeable or variable message signs, as “programmable traffic control devices

⁷ According to FEMA, the IPAWS also does not replace existing methods of alerting; rather, it “complements existing systems and offers new capabilities.” FEMA, *Alerting Authorities*, available at <https://www.fema.gov/alerting-authorities> (last visited January 3, 2020).

⁸ U.S. Department of Homeland Security, FEMA Fact Sheet, *Common Alerting Protocol (CAP) Implementation*, available at https://www.fema.gov/media-library-data/1568380949642-579c9da8ea408d112a223f72d167129a/CAP_Implementation_Fact_Sheet_2019.pdf (last visited January 3, 2020).

⁹ 47 CFR s. 10.400, available at <https://www.law.cornell.edu/cfr/text/47/10.400> (last visited January 3, 2020).

¹⁰ FEMA, *Alerting Authorities*, available at <https://www.fema.gov/alerting-authorities> (last visited January 3, 2020).

¹¹ U.S. Department of Homeland Security, FEMA, *Organizations with Alerting Authority Complete and In Process*, available at <https://www.fema.gov/media-library/assets/documents/117152> (last visited January 3, 2020).

that display messages composed of letters, symbols/graphics, or both.”¹² These signs “are used to convey timely and important en route and roadside information to motorists and travelers about changing highway conditions to improve operations and reduce crashes” and “may inform drivers of a need to change travel speed, change lanes, divert to a different route, or to be aware of a change in current or future traffic conditions.”¹³ However, Florida law also currently authorizes Missing Child Alerts, AMBER Alerts, Silver Alerts, and Blue Alerts to be displayed on dynamic message signs.

Existing Florida Statutory Alerts

Section 937.021, F.S., requires law enforcement agencies (LEAs) in this state to adopt written policies that specify the procedures to be used to investigate reports of missing children and missing adults. Section 784.071, F.S., authorizes Blue Alerts with respect to a law enforcement officer who has been killed or assaulted with a deadly weapon, has suffered serious bodily injury, or is missing while in the line of duty under circumstances evidencing concern for the officer’s safety. Section 937.022, F.S., creates the Missing Endangered Persons Information Clearinghouse (MEPIC) within the FDLE “to serve as a central repository of information regarding missing endangered persons.” That section requires every state, county, or municipal LEA to submit to the clearinghouse information on missing endangered persons, which information must be “collected and disseminated to assist in the location of missing endangered persons.”

A Missing Child Alert is intended to enable law enforcement to quickly communicate information on a missing child believed to be in life-threatening danger, but there is no indication that the child has been abducted.¹⁴ A Missing Child Alert may result in an AMBER Alert if investigation produces an indication that the child has been abducted.¹⁵ A state Silver Alert is intended to aid law enforcement in the rescue or recovery of a missing elderly person who suffers from irreversible deterioration of intellectual faculties¹⁶ and becomes lost while driving a vehicle.¹⁷

Generally, in each case, the local LEA with jurisdiction contacts the FDLE’s MEPIC. The FDLE works with the local LEA to determine whether information will be broadcast on a regional or statewide basis and prepares information for public distribution through the EAS, WEAs, the FDOT’s 511 traveler information system¹⁸ and dynamic message signs, lottery machines, and email, as appropriate.¹⁹

¹² FDOT, *Traffic Engineering Manual*, Chapter 2, Section 2.40.2, available at https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/traffic/trafficservices/studies/tem/tem-2020/traffic-engineering-manual-2020_chapter-2.pdf?sfvrsn=b7c6e687_2 (last visited December 23, 2019).

¹³ *Id.*

¹⁴ FDLE Missing Endangered Persons Information Clearinghouse, *Florida’s Missing Child Alert*, available at <http://www.fdle.state.fl.us/mcicsearch/MCApage.asp> (last visited January 3, 2020).

¹⁵ FDLE Missing Endangered Persons Information Clearinghouse, *AMBER Alerts*, available at <http://www.fdle.state.fl.us/mcicsearch/Amber.asp> (last visited January 3, 2020).

¹⁶ FDLE Missing Endangered Persons Information Clearinghouse, *Florida’s Silver Alert Plan*, available at <http://www.fdle.state.fl.us/mcicsearch/SilverAlerts.asp> (last visited January 5, 2020).

¹⁷ See *Florida Missing Persons and Blue Alert Plans*, Florida Department of Law Enforcement and Florida Department of Transportation, p. 1. (On file in the Senate Infrastructure and Security Committee.)

¹⁸ See s. 334.044(31) and s. 334.60, F.S. The 511 System is used only while dynamic message signs are displayed. *Id.* at p. 4.

¹⁹ *Supra* note 17 at pp. 1-5.

With respect to use of the FDOT's dynamic message signs, after contact from the FDLE, the appropriate FDOT Regional Transportation Management Center is ultimately responsible for displaying alert messages on those signs. If the alert message is:

- A Missing Child Alert or a Silver Alert, the message is displayed for a maximum of six hours and is re-activated if FDLE requests it, but only in the specific area the law enforcement believes the child may be located.
- An AMBER Alert, the message is displayed until the child is recovered or for a maximum of 24 hours, again re-activated upon FDLE's request only in the specific area law enforcement believes the child may be located.²⁰

Section 937.021(5), F.S., provides immunity from civil liability for complying in good faith with a request to record, report, transmit, display, or release Missing Child, AMBER, and Silver Alert information.

The FLDE, in conjunction with the Florida Highway Patrol, the FDOT, and the Department of Lottery, broadcasts information to the public through the EAS on television and radio when information about an offender would help avert further harm or assist in apprehending a suspect in connection with killing or harming a law enforcement officer.²¹ In such cases, dynamic message signs are also used to display Blue Alerts.²² These alerts use the technologies employed for Amber Alerts.²³ At the request of a local LEA, the FDLE Intelligence Watch and Warning Regional Special Agency Supervisor works with the investigating agency to prepare information for public release, include suspect and/or vehicle information. The FDLE will issue a Blue Alert if a law enforcement officer has been killed, suffered serious bodily injury, or been assaulted with a deadly weapon; or is missing while in the line of duty or under circumstances indicating concern for an officer's safety; and the suspect has fled the scene and poses an imminent threat to the public or to other law enforcement officers. The FDLE works with the FDOT's Regional Transportation Management Center, which is ultimately responsible for displaying Blue Alert messages on the dynamic message signs. Again, the alert is displayed for a maximum of six hours, with re-activation upon FDLE request in the specific area that law enforcement believes the person may be located.²⁴

The FDOT observes the following orders of priority with respect to these alert messages on dynamic message signs:

- If there are multiple alerts activated during the same time: AMBER, Missing Child, Blue, and Silver.
- If there are multiple AMBER, Missing Child, or Blue Alerts activated during the same time, each one is displayed on every other dynamic message sign.²⁵

²⁰ *Supra* note 17 at pp. 4-5.

²¹ *Supra* note 17.

²² Section 784.071, F.S.

²³ FDLE, *Florida Blue Alert Notification System*, available at <http://floridabluealert.com/> (last visited January 5, 2020.)

²⁴ *Supra* note 17 at pp. 4-5.

²⁵ *Id.* at p. 5.

III. Effect of Proposed Changes:

SB 834 creates s. 784.072, F.S., setting up a process to be followed for activation of the emergency alert system and issuance of “Lockdown Alerts” and “Imminent Threat Alerts” under certain conditions.

Definitions

The bill provides definitions for the following terms as used in the new section of law:

- “Child care facility” is defined to have the same meaning as in s. 402.302; *i.e.*, the term includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.²⁶
- “Imminent threat alert” means a notification issued pursuant to the bill’s provisions which informs the public that an imminent threat exists such that the lives and safety of people are endangered, including, but not limited to, instances in which a person suspected of killing or causing serious bodily injury to another person or assaulting another person with a deadly weapon has fled the scene of the offense.
- “Lockdown alert” means a notification issued pursuant to the bill’s provisions which informs public schools, private schools,²⁷ and child care facilities that an imminent threat exists, including, but not limited to, instances in which a person suspected of killing or causing serious bodily injury to another person or assaulting another person with a deadly weapon has fled the scene of the offense. The alert advises the schools and facilities to lock their doors and encourages persons in those schools and facilities to remain in lockdown and be vigilant in watching for and reporting any suspicious activity.
- “Private school” is defined to have the same meaning as in s. 1002.01, F.S.; *i.e.*, a nonpublic school defined as an individual, association, co-partnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization that provides identified instructional services or that gives pre-employment or supplementary training in technology or in fields of trade or industry or that offers academic, literary, or career training below college level, or any combination of the above, including an institution that performs the functions of the above schools through correspondence or extension, except those licensed under ch. 1005, F.S.²⁸ A private school may be a parochial, religious, denominational, for-profit, or nonprofit school.²⁹

²⁶ The term “child care facility” does not include public schools and nonpublic schools and their integral programs, with certain exception; summer camps having children in full-time residence; summer day camps; bible schools normally conducted during vacation periods; and operators of defined transient establishments that provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment undergo the level 2 background screening requirements of ch. 435, F.S.

²⁷ Under s. 1002.33(1), F.S., charter schools are public schools.

²⁸ Chapter 1005, F.S., addresses nonpublic postsecondary education.

²⁹ This definition does not include identified home education programs.

Lockdown Alerts

The bill authorizes a local LEA with jurisdiction over the scene of an incident giving rise to an imminent threat to the public to activate the emergency alert system and issue a Lockdown Alert to all public and private schools and child care facilities the LEA determines are at risk, given their proximity to the incident, including an incident in which all of the following conditions are satisfied:

- A person has been killed or has suffered serious bodily injury or a person has been assaulted with a deadly weapon by another person.
- The person suspected of committing the offense has fled the scene of the offense.
- The LEA investigating the offense has determined that the suspect poses an imminent threat to the public safety.

The bill directs each local LEA to create and maintain a list of all public schools, private schools, and child care facilities within its jurisdiction, and such schools and facilities are authorized to contact local LEAs to verify that the school or facility is included on the list of those that will receive a Lockdown Alert or to register to be included on the list. A local LEA is required to take a private school or child care facility off the list if the school or facility requests to be taken off the list.

Apparently, in order to activate the EAS, the local LEA must, among other requirements for participation in the EAS, have authority to alert the public of emergencies using the EAS, which would include having software capable of transmitting CAP-formatted alert messages. Further, assuming a local LEA has alerting authority, the alert message apparently must fall within one of the four classes of alert messages authorized under the federal regulations, which of course would be dependent upon the facts of a given event. While FEMA's list of alerting authorities appears to include many local LEAs, all local LEAs may not have such authority. However, the bill only authorizes a local LEA to activate the EAS under the specified conditions; the bill does not *require* local LEAs to do so.

Imminent Threat Alerts

The bill requires the FDLE, in cooperation with the Department of Highway Safety and Motor Vehicles (DHSMV) and the FDOT, to activate the emergency alert system and issue an Imminent Threat Alert to the public, upon the request of a local LEA, when the local LEA confirms that an imminent threat to the public exists, including, *but not limited to*, circumstances in which all of the same conditions for Lockdown Alert issuance are met; *i.e.*:

- A person has been killed or has suffered serious bodily injury or a person has been assaulted with a deadly weapon by another person.
- The person suspected of committing the offense has fled the scene of the offense.
- The LEA has determined that the suspect poses an imminent threat to the public safety.

To the extent practicable, the bill requires an Imminent Threat Alert to provide a detailed description of a suspect's vehicle or other means of escape, the license plate number of the suspect's vehicle, or any other available information that may assist in averting further harm or in the apprehending of the suspect.

The bill requires immediate dissemination of an Imminent Threat Alert to the public through the EAS and through the use of dynamic message signs located along the State Highway System. If a traffic emergency arises requiring display of information pertaining to the traffic emergency on the signs in lieu of an Imminent Threat Alert, the agency responsible for posting the alert on the signs does not violate the new section of law.

As the FDLE is listed by FEMA as an entity with alerting authority, the only question appears to be whether the alert meets the conditions for such an alert using the EAS under the federal regulations. Even if a given message did not meet the requirements of the federal regulations for dissemination of an Imminent Threat Alert using the EAS (urgency, severity, and certainty), nothing appears to prevent display of the required messages using the FDOT's dynamic message signs.

For both types of alerts, the bill provides civil liability immunity from damages for local, jurisdictional law enforcement agencies, the FDLE, any state or local law enforcement agency and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; any dealer³⁰ of communications services;³¹ or any agency, employee, individual, or entity for complying in good faith with the bill's requirements. The identified entities are presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing information pertaining to the alerts, and the presumption is not overcome if information received from the local law enforcement agency is incomplete or incorrect. The bill provides that no duty is created with respect to the alerts, and the decision to record, report, transmit, display or release information is discretionary.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁰ Defined in s. 202.11(2), F.S., to mean "a person registered with the department as a provider of communications services in this state.

³¹ Defined in s. 202.11(1), F.S., to mean "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added." The term does not include information services installation or maintenance of wiring or equipment on a customer's premises the sale or rental of tangible personal property; the sale of advertising, including, but not limited to, directory advertising; bad check charges; late payment charges; billing and collection services; or internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes but does not require local LEAs to activate the EAS and issue Lockdown Alerts. Private schools and child care facilities may incur indeterminate but likely insignificant expenses associated with verifying presence on or requesting removal from the local LEA's list of entities with respect to Lockdown Alerts.

The same schools and child care facilities, as well as the general public may benefit from improved communication of emergency information through Lockdown and Imminent Threat Alerts.

C. Government Sector Impact:

The bill authorizes but does not require local LEAs to activate the EAS and issue Lockdown Alerts. If the local LEA has EAS alerting authority, and the alert qualifies as an Imminent Threat Alert under the federal regulations, those LEAs already have processes and software in place and presumably would not incur significantly increased expenses. If a local LEA does not have alerting authority and chooses to undertake efforts to gain such authority, the local LEA would incur unknown expenses, including possible significant expenses associated with obtaining or upgrading necessary software. Local LEAs may incur unknown expenses associated with creating and maintaining the list of public schools, private schools, and child care facilities within the LEA's jurisdiction. Public schools may incur indeterminate but likely insignificant expenses associated with verifying presence on or requesting removal from the local LEA's list of entities with respect to Lockdown Alerts.

The bill requires the FDLE, in cooperation with the DHSMV and the FDOT, to activate the EAS and issue an Imminent Threat Alert under the specified conditions. Assuming the required alert meets the conditions for an Imminent Threat Alert under the federal regulations, it appears that policies and procedures are already in place, and no significant

increase in expenses would be expected. However, FDLE's analysis of the bill indicates that changes to technology will require an estimated \$170,000 in recurring funds.³² Similarly, because the potential increase in volume of alerts to be displayed on the dynamic message signs is indeterminate, the fiscal impact to the FDOT is indeterminate. The DHSMV expects minimal costs for training of FHP personnel.³³

If the bill requires updating the Florida Emergency Alert System Operational Plan, the State Emergency Communications Committee, the Division of Emergency Management, and entities making recommendations to the committee may incur indeterminate expenses.

The FDLE and FDOT may incur indeterminate expenses associated with updating the Florida Missing Persons and Blue Alert Plans.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 784.072 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Infrastructure and Security on January 13, 2020:

The committee substitute incorporates civil liability immunity provisions for law enforcement agencies, broadcasters, and other entities acting in good faith when involved in issuing Lockdown or Imminent Threat Alerts, consistent with the immunity provided to the same entities under current law for Missing Child Alerts, AMBER Alerts, and Silver Alerts.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³² See the FDLE 2020 Legislative Bill Analysis for SB 834 available at <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=25194&yr=2020> (last visited January 14, 2020).

³³ See the DHSMV 2020 Legislative Bill Analysis for SB 834 available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=29832> (last visited January 9, 2020).