



741906

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/17/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 252.38, Florida Statutes, is amended to
read:

252.38 Emergency management powers of political
subdivisions.—Safeguarding the life and property of its citizens
is an innate responsibility of the governing body of each
political subdivision of the state. However, political



741906

11 subdivisions are given police powers to preserve, not impair,
12 private rights. Therefore, a political subdivision that deprives
13 any person of a constitutional right, fundamental liberty,
14 statutory right, or property to address a purported emergency
15 bears the burden of proving that the exercise of police power is
16 narrowly tailored, serves a compelling governmental interest,
17 and accomplishes the intended goal through the use of the least
18 intrusive means.

19 (1) COUNTIES.—

20 (a) In order to provide effective and orderly governmental
21 control and coordination of emergency operations in emergencies
22 within the scope of ss. 252.31-252.90, each county within this
23 state shall be within the jurisdiction of, and served by, the
24 division. Except as otherwise provided in ss. 252.31-252.90,
25 each local emergency management agency shall have jurisdiction
26 over and serve an entire county. Unless part of an
27 interjurisdictional emergency management agreement entered into
28 pursuant to paragraph (3) (b) which is recognized by the Governor
29 by executive order or rule, each county must establish and
30 maintain such an emergency management agency and shall develop a
31 county emergency management plan and program that is coordinated
32 and consistent with the state comprehensive emergency management
33 plan and program. Counties that are part of an
34 interjurisdictional emergency management agreement entered into
35 pursuant to paragraph (3) (b) which is recognized by the Governor
36 by executive order or rule shall cooperatively develop an
37 emergency management plan and program that is coordinated and
38 consistent with the state comprehensive emergency management
39 plan and program.



741906

40 (b) Each county emergency management agency created and
41 established pursuant to ss. 252.31-252.90 shall have a director.
42 The director must meet the minimum training and education
43 qualifications established in a job description approved by the
44 county. The director shall be appointed by the board of county
45 commissioners or the chief administrative officer of the county,
46 as described in chapter 125 or the county charter, if
47 applicable, to serve at the pleasure of the appointing
48 authority, in conformance with applicable resolutions,
49 ordinances, and laws. A county constitutional officer, or an
50 employee of a county constitutional officer, may be appointed as
51 director following prior notification to the division. Each
52 board of county commissioners shall promptly inform the division
53 of the appointment of the director and other personnel. Each
54 director has direct responsibility for the organization,
55 administration, and operation of the county emergency management
56 agency. The director shall coordinate emergency management
57 activities, services, and programs within the county and shall
58 serve as liaison to the division and other local emergency
59 management agencies and organizations.

60 (c) Each county emergency management agency shall perform
61 emergency management functions within the territorial limits of
62 the county within which it is organized and, in addition, shall
63 conduct such activities outside its territorial limits as are
64 required pursuant to ss. 252.31-252.90 and in accordance with
65 state and county emergency management plans and mutual aid
66 agreements. Counties shall serve as liaison for and coordinator
67 of municipalities' requests for state and federal assistance
68 during postdisaster emergency operations.



741906

69 (d) During a declared state or local emergency and upon the
70 request of the director of a local emergency management agency,
71 the district school board or school boards in the affected area
72 shall participate in emergency management by providing
73 facilities and necessary personnel to staff such facilities.
74 Each school board providing transportation assistance in an
75 emergency evacuation shall coordinate the use of its vehicles
76 and personnel with the local emergency management agency.

77 (e) County emergency management agencies may charge and
78 collect fees for the review of emergency management plans on
79 behalf of external agencies and institutions. Fees must be
80 reasonable and may not exceed the cost of providing a review of
81 emergency management plans in accordance with fee schedules
82 established by the division.

83 (2) MUNICIPALITIES.—Legally constituted municipalities are
84 authorized and encouraged to create municipal emergency
85 management programs. Municipal emergency management programs
86 shall coordinate their activities with those of the county
87 emergency management agency. Municipalities without emergency
88 management programs shall be served by their respective county
89 agencies. If a municipality elects to establish an emergency
90 management program, it must comply with all laws, rules, and
91 requirements applicable to county emergency management agencies.
92 Each municipal emergency management plan must be consistent with
93 and subject to the applicable county emergency management plan.
94 In addition, each municipality must coordinate requests for
95 state or federal emergency response assistance with its county.
96 This requirement does not apply to requests for reimbursement
97 under federal public disaster assistance programs.



741906

98 (3) EMERGENCY MANAGEMENT POWERS; POLITICAL SUBDIVISIONS.—

99 (a) In carrying out the provisions of ss. 252.31-252.90,
100 each political subdivision shall have the power and authority:

101 1. To appropriate and expend funds; make contracts; obtain
102 and distribute equipment, materials, and supplies for emergency
103 management purposes; provide for the health and safety of
104 persons and property, including emergency assistance to the
105 victims of any emergency; and direct and coordinate the
106 development of emergency management plans and programs in
107 accordance with the policies and plans set by the federal and
108 state emergency management agencies.

109 2. To appoint, employ, remove, or provide, with or without
110 compensation, coordinators, rescue teams, fire and police
111 personnel, and other emergency management workers.

112 3. To establish, as necessary, a primary and one or more
113 secondary emergency operating centers to provide continuity of
114 government and direction and control of emergency operations.

115 4. To assign and make available for duty the offices and
116 agencies of the political subdivision, including the employees,
117 property, or equipment thereof relating to firefighting,
118 engineering, rescue, health, medical and related services,
119 police, transportation, construction, and similar items or
120 services for emergency operation purposes, as the primary
121 emergency management forces of the political subdivision for
122 employment within or outside the political limits of the
123 subdivision.

124 5. To request state assistance or invoke emergency-related
125 mutual-aid assistance by declaring a state of local emergency in
126 the event of an emergency affecting only one political



741906

127 subdivision. The duration of each state of emergency declared
128 locally is limited to 7 days; it may be extended, as necessary,
129 in 7-day increments. Further, the political subdivision has the
130 power and authority to waive the procedures and formalities
131 otherwise required of the political subdivision by law
132 pertaining to:

133 a. Performance of public work and taking whatever prudent
134 action is necessary to ensure the health, safety, and welfare of
135 the community.

136 b. Entering into contracts.

137 c. Incurring obligations.

138 d. Employment of permanent and temporary workers.

139 e. Utilization of volunteer workers.

140 f. Rental of equipment.

141 g. Acquisition and distribution, with or without
142 compensation, of supplies, materials, and facilities.

143 h. Appropriation and expenditure of public funds.

144 (b) Upon the request of two or more adjoining counties, or
145 if the Governor finds that two or more adjoining counties would
146 be better served by an interjurisdictional arrangement than by
147 maintaining separate emergency management agencies and services,
148 the Governor may delineate by executive order or rule an
149 interjurisdictional area adequate to plan for, prevent,
150 mitigate, or respond to emergencies in such area and may direct
151 steps to be taken as necessary, including the creation of an
152 interjurisdictional relationship, a joint emergency plan, a
153 provision for mutual aid, or an area organization for emergency
154 planning and services. A finding of the Governor pursuant to
155 this paragraph shall be based on one or more factors related to



156 the difficulty of maintaining an efficient and effective
157 emergency prevention, mitigation, preparedness, response, and
158 recovery system on a unijurisdictional basis, such as:

- 159 1. Small or sparse population.
- 160 2. Limitations on public financial resources severe enough
161 to make maintenance of a separate emergency management agency
162 and services unreasonably burdensome.
- 163 3. Unusual vulnerability to emergencies as evidenced by a
164 past history of emergencies, topographical features, drainage
165 characteristics, emergency potential, and presence of emergency-
166 prone facilities or operations.
- 167 4. The interrelated character of the counties in a
168 multicounty area.
- 169 5. Other relevant conditions or circumstances.

170 (4) EXPIRATION AND EXTENSION OF SIGNIFICANT EMERGENCY
171 ORDERS.-

172 (a) As used in this subsection, the term "significant
173 emergency order" means an order or ordinance issued or enacted
174 by a political subdivision in response to a state of emergency
175 declared pursuant to this chapter or a public health emergency
176 declared pursuant to chapter 381 which applies to all residents
177 of the political subdivision and limits the right of a resident
178 to:

- 179 1. Exercise religious freedom, including the right to
180 attend a religious service;
- 181 2. Speak freely or assemble;
- 182 3. Work, be rewarded for industry, or enter into a
183 contract;
- 184 4. Travel;



741906

- 185 5. Acquire, possess, or protect real or personal property;
- 186 6. Not be subject to unreasonable search and seizure; or
- 187 7. Purchase, keep, or bear a lawful firearm or ammunition.

188 (b) It is the intent of the Legislature to minimize the
189 negative effects and strictly scrutinize an extended significant
190 emergency order issued by a political subdivision. A significant
191 emergency order must be limited in duration, applicability, and
192 scope in order to reduce any infringement on individual liberty
193 to the greatest extent possible. Notwithstanding any other law,
194 in any action challenging a significant emergency order, the
195 issuing political subdivision bears the burden of proving that
196 the significant emergency order is narrowly tailored, serves a
197 compelling public health or safety purpose, and accomplishes the
198 intended goal through the use of the least intrusive means.

199 (c) A significant emergency order may provide exemptions
200 for first responders as defined in s. 112.1815(1); health care
201 practitioners as defined in s. 456.001; and employees of a
202 public utility as defined in s. 366.02(1).

203 (d) A significant emergency order shall automatically
204 expire 10 days after its issuance; however, such an order may be
205 extended before its expiration by a majority vote of the
206 governing body of the political subdivision if deemed necessary.

207 (e) Upon the expiration of a significant emergency order, a
208 political subdivision may not issue a substantially similar
209 order to respond to the same emergency.

210 Section 2. This act shall take effect July 1, 2021.

211 ===== T I T L E A M E N D M E N T =====

212 And the title is amended as follows:

213 Delete everything before the enacting clause



741906

214 and insert:

215 A bill to be entitled
216 An act relating to emergency management powers of
217 political subdivisions; amending s. 252.38, F.S.;
218 specifying that political subdivisions have the burden
219 of proving the proper exercise of its police power in
220 issuing certain emergency orders; defining the term
221 "significant emergency order"; providing legislative
222 intent; specifying limitations on the duration,
223 applicability, and scope of significant emergency
224 orders; specifying that political subdivisions have
225 the burden of proving the legality of a significant
226 emergency order in any action challenging such an
227 order; authorizing significant emergency orders to
228 exempt specified individuals; specifying the duration
229 of significant emergency orders; authorizing the
230 extension of such orders if certain conditions are
231 met; prohibiting the issuance of certain significant
232 emergency orders following an order's expiration;
233 providing an effective date.