

**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.)

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Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs, Space, and Domestic Security

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BILL: CS/SB 1924

INTRODUCER: Community Affairs Committee and Senator Diaz

SUBJECT: Emergency Management Powers of Political Subdivisions

DATE: March 29, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<b>Fav/CS</b>
2.	<u>Stallard</u>	<u>Caldwell</u>	<u>MS</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1924 provides that if a county, city, or other subdivision of the state deprives a person of property, a statutory or constitutional right, or a fundamental liberty to address a purported emergency, the deprivation is subject to a highest level of judicial scrutiny. Under current law, this level of “strict scrutiny” is reserved for measures that deprive a person of a fundamental right or liberty.

Under the bill, as under strict scrutiny, a county or city must prove that its exercise of police power is “narrowly tailored,” serves a “compelling governmental interest,” and accomplishes the intended goal through the use of the “least intrusive means.”

The bill also provides that the Governor, or Legislature by concurrent resolution, may invalidate a political subdivision's emergency ordinance, rule, or other measure if the Governor or Legislature determines that the measure “unnecessarily restricts a constitutional right, fundamental liberty, or statutory right.”

Lastly, the bill provides that an emergency order issued by a political subdivision will automatically expire 10 days after its issuance unless extended by a majority vote of the political subdivision's governing body.

The bill takes effect July 1, 2021.

## II. Present Situation:

### Summary

Current law does not expressly provide the Governor or Legislature with the authority to invalidate an ordinance or other measure of a political subdivision which unnecessarily restricts a constitutional right, fundamental liberty, or statutory right. However, current law does provide that any emergency order or rule of a political subdivision is invalid if it is inconsistent with any order or rule of an executive agency, provided the Governor or the Division of Emergency Management has delegated emergency authority to the agency.<sup>1</sup>

Moreover, under case law interpreting the United States Constitution, governmental action—such as an emergency order or a rule—that infringes a “fundamental” constitutional right or liberty is subject to “strict scrutiny,” the most demanding level of judicial scrutiny.<sup>2</sup> If an order or rule fails to survive strict scrutiny, it is unconstitutional, and thus invalid.<sup>3</sup>

### State Emergency Management Act

#### *Overview and Legislative Intent*

The State Emergency Management Act is set forth in ch. 252, F.S. In the Act, the Legislature finds and declares that Florida is vulnerable to a wide range of emergencies, including natural, manmade, and technological disasters.<sup>4</sup> These emergencies and disasters threaten people, property, and the economy.<sup>5</sup>

Accordingly, Legislature passed the Act with the intent to reduce the state’s vulnerability to these circumstances and to prepare to respond to them.<sup>6</sup> The legislative intent also includes promoting the state’s emergency readiness through enhanced coordination, long-term planning, and adequate funding.<sup>7</sup>

The Act describes the respective emergency powers of the three branches of state government, as well as the powers of counties, cities, and other subdivisions of the state. The Act grants the executive branch with primary authority for emergency management.<sup>8</sup>

The Governor has the authority to declare an emergency and enter emergency orders, which have the force and effect of law.<sup>9</sup> The Division of Emergency Management in the Executive Office of the Governor is charged with maintaining the state comprehensive emergency management plan and otherwise leading the state’s emergency management apparatus.<sup>10</sup> Nonetheless, the Act also

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<sup>1</sup> Section 252.46(1), F.S.

<sup>2</sup> See *Zablocki v. Redhail*, 434 US 374, 383 (1978).

<sup>3</sup> See generally, *Id.*

<sup>4</sup> Section 252.311(1), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 252.311(2), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> See ss. 252.35 and 252.36, F.S.

<sup>9</sup> Section 252.36, F.S.

<sup>10</sup> Section 252.35, F.S.

grants local governments with the authority to enter emergency orders and rules that are consistent with those of the executive branch.<sup>11</sup>

### ***The Governor's Duties and Authority Regarding Emergencies***

If the Governor finds that an emergency has occurred or is imminent, he or she must declare a state of emergency.<sup>12</sup> The state of emergency continues until the Governor terminates it, or until more than 60 days pass, whichever occurs sooner.<sup>13</sup> However, the Legislature may end a state of emergency by passing a concurrent resolution.<sup>14</sup>

The Florida Statutes acknowledge that the Governor “is responsible for meeting the dangers presented to this state and its people by emergencies.”<sup>15</sup> Accordingly, in the event of an emergency that is beyond local control, the Governor is authorized to assume “direct operational control” over all or any part of the emergency management functions.<sup>16</sup> Moreover, he or she may issue executive orders, proclamations, and rules, all of which have the “force and effect of law.”<sup>17</sup>

### ***The Division of Emergency Management***

In the State Emergency Management Act, the Legislature created the Division of Emergency Management within the Executive Office of the Governor.<sup>18</sup> The division is responsible for “maintaining a comprehensive statewide program of emergency management.”<sup>19</sup> The division is also “responsible for coordination with efforts of the Federal Government, with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management.”<sup>20</sup>

Additionally, the division is responsible for “carrying out” the State Emergency Management Act.<sup>21</sup> This includes various enumerated duties, the first of which is the creation of the state comprehensive emergency management plan.<sup>22</sup>

As for its contents, the plan must:

- Address the need for coordinated and expeditious deployment of the National Guard and other state resources.
- Establish a system of communications and warning to be used during natural disasters and other emergencies.

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<sup>11</sup> Section 252.46, F.S.

<sup>12</sup> Section 252.36(2), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 252.36(2), F.S.

<sup>15</sup> Section 252.36(1), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 252.36(1)(b), F.S.

<sup>18</sup> *See* ss. 252.32(1) and 252.34(3), F.S.

<sup>19</sup> Section 252.35(1), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 252.35(2), F.S.

<sup>22</sup> *See Id.*

- Establish guidelines and schedules for annual exercises that evaluate the ability of the state and its political subdivisions to respond to disasters and support local emergency management agencies.
- Assign lead and support responsibilities to state agencies and personnel.<sup>23</sup>

Additionally, the plan must include:

- An evacuation component that includes regional and interregional coordination of evacuation activities.
- A shelter component that includes regional and interregional planning provisions and promotes coordination of sheltering between the public, private, and nonprofit sectors.
- A post-disaster relief component.<sup>24</sup>

In addition to the creation of the state comprehensive emergency management plan, the division must fulfill more than 20 duties listed in Act, including:

- Cooperate with the President, the heads of the Armed Forces, the various federal emergency management agencies, and the officers and agencies of other states in matters pertaining to emergency management in the state and the nation and incidents thereof.
- Institute statewide public awareness programs, including an intensive public educational campaign on emergency preparedness issues.
- Delegate, as necessary and appropriate, authority vested in it under the State Emergency Management Act and provide for the subdelegation of this authority.
- Report to the President of the Senate, the Speaker of the House of Representatives, and the Governor, no later than February 1 of every odd-numbered year, the status of the emergency management capabilities of the state and its political subdivisions.
- Maintain, in coordination with local emergency management agency of the state, a registry of persons with special needs located within the jurisdiction of the local agency.<sup>25</sup>

### ***Cities' and Counties' Emergency Management Authority***

The State Emergency Management Act expressly grants cities, counties, and other subdivisions of the state with certain emergency management powers.<sup>26</sup>

A city or county is “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 State Emergency Management Act.<sup>27</sup> However, the rules and orders may not be “inconsistent with any orders or rules adopted by the division or by any state agency exercising a power delegated to it by the Governor or the division.”<sup>28</sup> The rules and orders have the “full force and effect of law” if they are adopted as rules pursuant to the Administrative Procedure

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Section 252.35(2)(b)-(y), F.S.

<sup>26</sup> *See* ss. 252.38 and 252.46, F.S.

<sup>27</sup> Section 252.46(1), F.S.

<sup>28</sup> *Id.*

Act.<sup>29</sup> Nonetheless, political subdivisions' authority is subject to the authority of the state, and the subdivisions' actions must be consistent with statewide plans, laws, orders, and rules.<sup>30</sup>

Accordingly, each county is “within the jurisdiction of, and shall be served by,” the Division of Emergency Management.<sup>31</sup> And each county must establish an emergency management agency and plan or be part of an interjurisdictional emergency management agreement that is recognized by the Governor.<sup>32</sup> Moreover, each county must appoint an emergency management director and inform the division of the appointment.<sup>33</sup> In addition to performing emergency management duties within its county, each county emergency management agency must conduct activities outside its county as required under the Act and in accordance with state and county emergency management plans and mutual-aid agreements.

Municipalities are authorized and encouraged, but not required, to create municipal emergency management programs.<sup>34</sup> If a municipality chooses to establish an emergency management program, it must comply with all laws, rules, and requirements applicable to county emergency management agencies.<sup>35</sup>

Finally, the Act grants cities and counties a list of emergency management powers, including the power and authority to appropriate and expend funds, establish operating centers, declare a local emergency, and request aid consistent with the emergency.<sup>36</sup>

### **Judicial Review of Governmental Action – Levels of Scrutiny**

Any governmental action, including the entry of orders and the promulgation of rules, is subject to the courts' review of the action's constitutionality.<sup>37</sup> If a court finds that a law, rule, or order infringes a person's constitutional rights, the court must then subject it to one of three levels of scrutiny, depending upon the nature of the infringement.<sup>38</sup> These levels are strict scrutiny, intermediate scrutiny, and rational basis review. If the action fails to pass the applicable level of scrutiny, it is unconstitutional, and thus invalid.<sup>39</sup>

Governmental action that infringes a “fundamental right” is subject to “strict scrutiny,” which is the most demanding level of scrutiny.<sup>40</sup> To survive strict scrutiny, a rule or an order must further a “compelling governmental interest.”<sup>41</sup> Additionally, the rule or order must be “narrowly tailored” to advance the interest.<sup>42</sup> Moreover, the rule or order must be the “least restrictive

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<sup>29</sup> Section 252.46(2), F.S. The Administrative Procedure Act is ch. 120, F.S.

<sup>30</sup> *See Id.*

<sup>31</sup> Section 252.38(1)(a), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 252.38(1)(b), F.S.

<sup>34</sup> Section 252.38(2), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Section 252.38(3), F.S.

<sup>37</sup> *See Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982).

<sup>38</sup> *See generally, Birchansky v. Clabaugh*, 955 F.3d 751, 756 (2020).

<sup>39</sup> *Id.*

<sup>40</sup> *See Zablocki v. Redhail*, 434 US 374, 383 (1978).

<sup>41</sup> *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 357 (1978).

<sup>42</sup> *Westerheide v. State*, 831 So. 2d 93, 110 (Fla. 2002).

means” of furthering the compelling governmental interest.<sup>43</sup> Examples of fundamental rights include the right to marry,<sup>44</sup> the right to free speech, the freedom of worship and assembly, and the right to life, liberty, and private property.<sup>45</sup> Strict scrutiny also applies to laws that discriminate on the basis of a highly protected characteristic, such as race.<sup>46</sup>

Intermediate scrutiny has been applied to laws or other governmental actions that discriminate on the basis of sex or sexual orientation.<sup>47</sup> To pass intermediate scrutiny, a law, order, or rule must serve an important governmental objective and be substantially related to the objective.<sup>48</sup>

The lowest level of review, and thus the easiest for the government to pass, is rational basis review.<sup>49</sup> This level applies to laws, orders, or rules that are allegedly irrational or arbitrary, or that discriminate on less-protected bases, such as age or disability.<sup>50</sup> To survive a rational basis review, the governmental action at issue must be rationally related to a legitimate state interest.<sup>51</sup>

### **United States Supreme Court Cases Regarding COVID-19 Restrictions**

The United States Supreme Court has heard at least two cases regarding the constitutionality of COVID-19 restrictions.<sup>52</sup> In neither case did the court depart from the normally applicable level of scrutiny, notwithstanding the “emergency” surrounding the governmental action.<sup>53</sup>

### **Challenges to Local COVID-19 Restrictions in Florida**

#### ***Walton County Beach Closure***

On March 19, 2020, the Walton County Board of County Commissioners adopted Ordinance 2020-08, which states, “[a]ll beaches within Walton County, Florida, are temporarily CLOSED to the public... It shall be unlawful for members of the public to access the beaches within Walton County.” The ordinance recitals cite Governor DeSantis’ Executive Order 20-68<sup>54</sup> as the authority for the emergency measure and ss. 252.38 and 125.66(3), F.S.

A group of property owners who own oceanfront (beach) property in Walton County affected by Ordinance 2020-08 filed suit challenging the ordinance’s legality.<sup>55</sup> These parties claimed that

<sup>43</sup> *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 357 (1978).

<sup>44</sup> *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

<sup>45</sup> *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943).

<sup>46</sup> *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 357 (1978).

<sup>47</sup> *See Craig v. Boren*, 429 U.S. 190 (1976).

<sup>48</sup> *See Heller v. District of Columbia*, 670 F.3d 1244, 1258 (D.C. Cir. 2011).

<sup>49</sup> *See generally, Silvio Membreno and Fla. Ass’n of Vendors, Inc. v. City of Hialeah*, 188 So. 3d 13, 19 (Fla. 2016).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 19-20.

<sup>52</sup> *See e.g., South Bay United Pentecostal Church v. Newsom*, 140 S.Ct. 1613 (2020); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020).

<sup>53</sup> *Id.*

<sup>54</sup> EO 20-68 (March 17, 2020) Section 2 states “[p]ursuant to section 252.36(5)(k), Florida Statutes, I direct parties accessing public beaches in the State of Florida to follow the CDC guidance by limiting their gatherings to no more than ten persons, distance themselves from other parties by 6 feet, and support beach closures at the discretion of local authorities.”

<sup>55</sup> *Dodero v. Walton County*, N.D. Fla. 2020, Case No.: 3:20cv5358-RV/HTC.

Walton County's ordinance constituted a Fifth Amendment Takings,<sup>56</sup> was preempted by the Governor, violated Florida's constitutional Right to Privacy, violated constitutional due process rights, and lacked statutory authority.

After the plaintiffs filed a motion for an injunction against Walton County and a preliminary hearing, the Federal Judge issued an order denying plaintiffs' requests for relief. The judge did not find the county's action to violate the Fourth Amendment or Florida's privacy rights and found the ordinance to be consistent with, and authorized by, the Governor's Executive Order No. 20-68.

### ***Alachua County Restrictions on Businesses and Mask Mandate***

On May 2, 2020, the Alachua County Board of County Commissioners issued Emergency Order 2020-21, which among other measures, imposed mandatory face coverings in certain situations and locations where social distancing was not possible and imposed additional business occupancy restrictions.<sup>57</sup>

A local business owner challenged the county's order claiming that the order lacked authority under the county code and the State Emergency Management Act, constituted a Fifth Amendment Takings, violated Florida's constitutional Right to Privacy, and violated the Equal Protection Clause.<sup>58</sup> In denying the plaintiff's motion for an injunction against the county, the judge claims several rationales. First, the judge states, "[t]he protection of the safety and welfare of the public is inherent in the role of local government." The judge continues this line of reasoning by explaining:

"Alachua County is responsible for reducing the spread of COVID-19 among its citizens and also for ensuring its citizens have access to medical care if they become infected. An individual Alachua County citizen's right to be let alone is no more precious than the corresponding right of his fellow citizens not to become infected by that person and potentially hospitalized."<sup>59</sup>

### ***Leon County Mask Mandate***

On June 23, 2020, Leon County's board of commissioners held a special meeting and unanimously adopted face-covering requirements through Emergency Ordinance 20-15. The Emergency Ordinance requires individuals in an indoor business establishment to wear a face covering. The Emergency Ordinance was challenged as being unconstitutional.<sup>60</sup> On July 27, 2020, Circuit Court Judge John C. Cooper upheld the ordinance as constitutional. In his ruling, Judge Cooper states that:

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<sup>56</sup> The Fifth Amendment of the United States Constitution includes a provision known as the Takings clause, which states that "private property [shall not] be taken for public use, without just compensation."

<sup>57</sup> EO 20-112 (April 29, 2020) states "[i]n-store retail sales establishments may open storefronts if they operate at no more than 25 percent of their building occupancy and abide by the safety guidelines issued by the CDC and OSHA." Section 7 of Alachua County's order states, "[e]ssential services and activities, and retail establishments shall limit occupancy, to one per five hundred square feet of covered space. In no case does this allow more than Executive Order 20-112."

<sup>58</sup> *Green v. Alachua County*, Case No. 2020-CA-001249, Fla. 8th Cir. Ct.

<sup>59</sup> *Id.*

<sup>60</sup> *Power v. Leon County*, Case No. 2020-CA-001200, Fla. 2nd Cir. Ct., available at: <https://www.fl-counties.com/sites/default/files/2020-07/7.27.20%20Final%20Order.pdf> (last visited Mar. 12, 2021).

"It has long been recognized that when, as here, there is an emergency, the police power gives governmental authorities power to act for the public welfare that they might not otherwise have. This line of cases extends back to the 1905 United States Supreme Court case of *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11(1905)[.]"

Judge Cooper quoted a recent case from the United States Fifth Circuit Court of Appeals:

"Importantly, it is 'no part of the function of a court to decide which measures are likely to be the most effective for the protection of the public against disease.' *In re Abbott*, 954 F. 3d 772, 778 (5<sup>th</sup> Cir. 2020) (quoting *Jacobson*, 197 U.S. at 29). When as here, a court is faced with a society threatening epidemic, 'a state may implement emergency measures that curtail constitutional rights so long as the measures have at least real or substantial relation to the public health crisis and are not beyond all question, a plain, palpable invasion of rights secured by the fundamental law.' *Id.* at 784 (quoting *Jacobson*, 197 U.S. at 31)."<sup>61</sup>

### *Miami-Dade County Curfew*

Miami-Dade County's third amendment to Emergency Order 27-20 included a late-night curfew provision commencing on October 12, 2020. The curfew provided that "no person shall make use of any street or sidewalk for any purpose, except police, fire rescue, first responder, medical, health care, media, and utility repair service personnel." The curfew also made additional exceptions for individuals traveling to and from "essential establishments" for work, persons walking dogs within 250 feet of a residence, and individuals "[t]raveling to and from any sporting event sponsored by the NCAA, Major League Baseball, or the National Football League, or any other national professional sports league or organization." In the order's recitals, Miami-Dade cited subsections (e) and (o) of section 8B-7(2) of the Code of Miami-Dade County as authority to issue the order.<sup>62</sup>

On November 4, 2020, Florida's Third District Court of Appeal reversed a trial court injunction Miami-Dade County's enforcing a late-night curfew meant to address the transmission of COVID-19.<sup>63</sup> In this case, the court found that Governor DeSantis' executive order<sup>64</sup> forbidding local governments from enacting COVID-19 emergency measures that "prevent[ed] an individual from working or from operating a business" did not expressly preempt the imposition of a curfew by the county.

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<sup>61</sup> *Id.* at 8.

<sup>62</sup> Section 8B-7(2)(e) and (o) of the Code of Miami-Dade County state, "(2) Once a Local State of Emergency has been declared, the Manager is authorized by the Mayor and the Board to order any or all of the following actions: (e) Curfew: In the period before, or during and immediately after an event, an order imposing a general curfew applicable to Miami-Dade County as a whole, or to geographical area(s) of Miami-Dade County and during hours the Manager deems necessary, and from time to time, to modify the hours the curfew will be in effect and what area(s) it applies to; (o) Such other orders as are immediately necessary for the protection of life and property; provided, however that any such orders shall, at the earliest practicable time, be presented to the Board for ratification or confirmation in accordance with this chapter."

<sup>63</sup> *Miami-Dade County v. Miami Gardens Square One, Inc.*, --- So.3d ---, 2020 WL 6472542 (Fla. 3rd DCA 2020).

<sup>64</sup>EO 20-244 (Sep. 25, 2020).



In reaching this decision, the court found that the State Emergency Management Act did not expressly preempt emergency powers to the state. The imposition of a curfew was within the home rule powers of Miami-Dade County. The court noted the provision in the State Emergency Management Act, which states, "[s]afeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state."<sup>65</sup>

### ***Broward County Curfew***

On October 16, 2020, Broward County issued Emergency Order 20-28, which allowed businesses to re-open subject to certain health protocols related to COVID-19. Sections 1 and 2 of Emergency Order 20-28, however, prohibited the sale or consumption of food or alcohol between the hours of midnight and 5:00 a.m. In response, a collective of restaurants and entertainment establishments licensed to serve food and libations in Broward County filed a lawsuit challenging the curfew.<sup>66</sup>

On December 21, 2020, the Southern District of Florida U.S. District Court granted the Plaintiffs' motion for a temporary restraining order and preliminary injunction. It enjoined Broward County from enforcing the midnight to 5:00 a.m. curfew on the sale or consumption of food or alcohol. The court reasoned that the curfew restrictions did not "quantify the economic impact of each limitation or requirement on those restaurants" and "explain why each limitation or requirement is necessary for public health[,]" as required by Governor DeSantis' Executive Order 20-244. When discussing this issue, the court states:

And, the restrictions on the sale, service, or consumption of food, is not related, in this record, to the increasing likelihood of contracting COVID-19. The record is certainly absent any analysis that "quantif[ies] the economic impact of each limitation or requirement on those restaurants" and "explain[s] why each limitation or requirement is necessary for public health" as applied to food service. Fla. Exec. Order 20-244, §§ 3(A)(i), (ii) (Sept. 25, 2020). Thus, on this record, the temporal restrictions on food and alcohol service are rather arbitrary.

### **III. Effect of Proposed Changes:**

The bill provides that if a county, city, or other subdivision of the state deprives a person of property, a statutory or constitutional right, or a fundamental liberty to address a purported emergency, the deprivation is subject to a highest level of judicial scrutiny. Under current law, this level of "strict scrutiny" is reserved for measures that deprive a person of a fundamental right or liberty.

Under the bill, as under strict scrutiny, a county or city must prove that its exercise of police power is "narrowly tailored," serves a "compelling governmental interest," and accomplishes the intended goal through the use of the "least intrusive means."

The bill also provides that the Governor, or Legislature by concurrent resolution, may invalidate a political subdivision's emergency ordinance, rule, or other measure if the Governor or

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<sup>65</sup> *Id.* at 5.

<sup>66</sup> *828 Management, LLC v. Broward county*, 2020 WL 7635169 (S.D. Fla. Dec. 21, 2020).

Legislature determines that the measure “unnecessarily restricts a constitutional right, fundamental liberty, or statutory right.”

Lastly, the bill provides that an emergency order issued by a political subdivision will automatically expire 10 days after its issuance unless extended by a majority vote of the political subdivision's governing body.

The bill takes effect July 1, 2021.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The bill authorizes the Governor or the Legislature to invalidate an emergency measure, such as an ordinance, if it “unnecessarily” restricts a constitutional right, fundamental liberty, or statutory right. The Legislature may wish to explain more clearly what unnecessarily restricting a right or liberty means. Under the bill, one might wonder, for instance: If an ordinance would reduce COVID-19 infections by 10 percent but would deprive residents of their constitutional right to freely exercise their religion, would this *unnecessarily* restrict this right? What if the ordinance would reduce the spread of COVID-19 by 50 percent?

This provision of the bill also raises the question of how the Legislature or the Governor would make the determination that a local emergency measure unnecessarily restricts a constitutional right, fundamental right, or statutory right.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 252.38 and 252.46 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 Community Affairs on March 16, 2021:**

The committee substitute:

- Provides a more precise iteration of the strict scrutiny standard of judicial review;
- Provides that the Governor, or Legislature by concurrent resolution, may at any time invalidate an emergency action by a political subdivision if it unnecessarily restricts a constitutional right, fundamental liberty, or statutory right; and
- Provides that an order issued by a political subdivision under s. 252.46, F.S., will automatically expire after 10 days unless extended by a majority vote of the political subdivision's governing body and that upon the expiration of an order, a political subdivision may not issue a substantially similar order to respond to the same emergency.

- B. **Amendments:**

None.