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 Community Affairs

BILL:	SB 1924
INTRODUCER:	Senator Diaz
SUBJECT:	Limitations on Emergency Powers of Political Subdivisions
DATE:	March 12, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Pre-meeting**
2.			MS	
3.			RC	

I. Summary:

When the government deprives individuals of constitutional rights and fundamental liberties, the judiciary has traditionally assessed the government's action using the strict scrutiny standard of review. Under this level of judicial scrutiny, the government bears the burden of proving that the State action is narrowly tailored and serves a compelling state interest.

SB 1924 establishes that any emergency action imposed by a political subdivision, which curtails or infringes on the rights of private individuals, must be narrowly tailored to serve a compelling public health or safety purpose and be limited in duration, applicability, and scope to reduce any infringement on individual liberty to the greatest extent possible.

II. Present Situation:

The State Emergency Management Act

The State Emergency Management Act in ch. 252, F.S., describes how Florida prepares, responds, recovers, and mitigates emergencies. Chiefly, this Act endows the Governor with authority to declare a state of emergency.[1] In a state of emergency, the Governor and local governments have broad power to perform necessary actions to ensure the health, safety, and welfare of Floridians.[2] A state of emergency grants the Governor with additional statutory authority to perform actions not otherwise allowed by law, such as the ability to impose curfews, order evacuations, determine means of ingress and egress to and from affected areas, and commandeer or utilize private property subject to compensation. To facilitate emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which

[1] Section 252.36(2), F.S.

[2] *Id.* at (5)(g). *See also Miami-Dade County v. Miami Gardens Square One, Inc.*, --- So.3d ----, 2020 WL 6472542 (Fla. 3rd DCA Nov. 4, 2020).

have the force and effect of law.[3] The Governor may delegate this and other emergency powers to executive agencies and local governments.[4] Florida law does not condition the Governor's ability to declare a state of emergency on any specific prerequisite other than the existence of an actual or impending "emergency."[5]

Emergency Management Powers of Political Subdivisions

The specific emergency management powers afforded to local governments are described in s. 252.38, F.S. These powers may be supplemented by any powers delegated by the Governor to a local government during a state of emergency, or conversely, may be preempted by the authority of the Governor. Section 252.38, F.S., begins by stating, "[s]afeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state."

More specifically, s. 252.38(3), F.S., enumerates the following powers and authorities granted to political subdivisions to carry out the provisions of the State Emergency Management Act:

- To appropriate and expend funds; make contracts; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of an emergency, and direct and coordinate the development of emergency management plans and programs.
- To appoint and manage emergency management workers, such as coordinators, rescue teams, fire and police personnel, and others.
- To establish emergency operating centers to provide continuity of government and direction and control of emergency operations.
- To assign and make available for duty the offices and agencies of the political subdivision.
- To request state assistance or invoke emergency-related mutual-aid assistance by declaring a state of local emergency, the duration of which is limited to 7 days and may be extended, as necessary, in 7-day increments.
- To waive procedures and formalities otherwise required of the political subdivision by law pertaining to:
    - Performance of public works and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.
    - Entering contracts, incurring obligations, employing of permanent or temporary workers, utilization of volunteer workers, rental of equipment, acquisition and distribution of supplies, materials, and facilities, and appropriation and expenditure of public funds.

Orders and Rules

Section 252.46(1), F.S., authorizes and empowers political subdivisions (and state agencies) to make, amend, and rescind such orders and rules as necessary for emergency management purposes to carry out the provisions of ss. 252.31-252.90, F.S. However, these orders and rules may not be inconsistent with any orders or rules adopted by the Division of Emergency Management or any state agency exercising a power delegated to it by the Governor or the

[3] *Id* at (1)(b).
[4] Section 252.35(2)(v), F.S.
[5] Section 252.36(2), F.S. An "emergency" is defined as "any occurrence, or threat thereof, . . . which results or may result in substantial injury or harm to the population or substantial damage to or loss of property."

Division. All such orders and rules promulgated by a political subdivision have the full force and effect of law when filed with the office of the clerk or recorder of the political subdivision promulgating the order or rule.[6]

Penalties

Under s. 252.50, F.S., any person who violates any provision of ss. 252.31-252.90, F.S., or any rule or order made by a political subdivision pursuant thereto is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.[7]

Local Emergency Ordinances

Statutory emergency ordinance procedures allow a county or municipality's governing body at any regular or special meeting to enact or amend any ordinance with a waiver of the notice requirements.[8] For a typical non-emergency ordinance, a notice of intent to consider a proposed ordinance must be provided at least 10 days prior to the meeting by publication in a newspaper. Counties may enact an emergency ordinance by a four-fifths vote, declaring that an emergency exists and that the immediate enactment of said ordinance is necessary.[9] An emergency ordinance enacted under this procedure shall be transmitted by e-mail to the Department of State and shall take effect when a copy has been accepted and confirmed by the department by e-mail. A two-thirds vote may enact municipal emergency ordinances. These procedures essentially allow a county or municipality to enact or amend an ordinance with no notice and taking effect immediately.

Police Powers

In addition to the emergency powers provided to local governments in the State Emergency Management Act, local governments also have State police powers under home rule authority.[10] Police Powers are the government's sovereign power to enact and enforce laws and manage civil life.

Under the Tenth Amendment to the U.S. Constitution, states are granted the rights and powers "not delegated to the United States." Courts have interpreted this phrase to mean that state governments have the power to establish and enforce laws protecting the welfare, safety, and health of the public.[11]

---

[6] Any person violating any rule or order made pursuant to ss. 252.31-252.90, F.S., is guilty of a misdemeanor of the second degree.

[7] Section 775.082(4)(b), F.S.: "For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days." s. 775.083(1)(e), F.S.: "Fines for designated crimes and for noncriminal violations shall not exceed: $500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation."

[8] *See* s. 125.66(3), F.S., for county emergency ordinance procedures and s. 166.041(3)(b), F.S., for municipal emergency ordinance procedures.

[9] However, no emergency ordinance or resolution may be enacted which establishes or amends zoning map designations of any parcel or that changes the list of permitted uses within a zoning category.

[10] Under Article VIII, Section 1 and 2 of the Florida Constitution, counties and municipalities are granted such powers of self-government as provided by general or special law. This enumerated power of self-government is known as "home rule power." *See also* s. 125.01 and s. 166.021, F.S.

[11] *See Bond v. U.S.*, 572 U.S. 844 (2014)

Individual Rights and Liberties

As a constraint to State police powers, the founders of our country and states provided individuals civil rights and liberties enumerated in the Federal and state constitutions. The principal purpose of the U.S. and state governments is to preserve and protect these rights and liberties.[12] The overwhelming majority of court decisions that define American civil rights and liberties are based on the Bill of Rights, the first ten amendments added to the Constitution in 1791.[13] Civil rights are also protected by the Fourteenth Amendment, which protects the state governments' violation of rights and liberties.

The Fifth and Fourteenth Amendments to the U.S. Constitution provide that "[n]o state… shall deprive any person of life, liberty, or property without due process of law."[14] This constitutional protection is known as the due process clause. The due process clause requires that every person shall have the protection of his day in court, the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial so that every citizen shall hold life, liberty, property, and immunities under the protection of the U.S. Constitution and general laws which govern society.[15] The U.S. Supreme Court has described due process protections as those rights that are "the very essence of a scheme of ordered liberty" and essential to "a fair and enlightened system of justice."[16]

While courts have not established an exact definition of "liberty" in this constitutional protection, the U.S. Supreme court has stated that "[w]ithout doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."[17] When discussing our right to liberty, courts have put enfaces on whether a right is deeply rooted in our nation's history and tradition.[18]

The Strict Scrutiny Standard of Judicial Review

The strict scrutiny standard of judicial review is a paradigm courts use to determine the constitutionality of government action. When a statute or ordinance infringes on a civil right or impairs the exercise of fundamental liberty, then the law must pass strict scrutiny standards of judicial review. To withstand strict scrutiny, a law must be necessary to promote a compelling

[12] "Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses." – James Madison, Essay on Property, 1792
[13] The Bill of Rights includes: the freedom of religion, speech, press, assembly, and petition; the right to keep and bear arms in order to maintain a well-regulated militia; freedom from unreasonable searches and seizures; right to privacy; right to due process of law, freedom from self-incrimination, double jeopardy; rights of accused persons, e.g., right to a speedy and public trial; right of trial by jury in civil cases; freedom from excessive bail, cruel and unusual punishments.
[14] U.S. Const. amend. V. & XIV
[15] *Hurtado v. California*, 110 U. S. 516, 535 (1884)
[16] *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934)
[17] *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).
[18] *McDonald v. City of Chicago, III.*, 561 U.S. 742 (2010).

governmental interest and must be narrowly tailored to advance that interest (accomplishes its goal through the use of the least intrusive means).[19]

Government action may fail the narrow tailoring inquiry by lacking proof of the necessity of the infringement, being underinclusive, or being overinclusive.[20]

Proof of Necessity of Infringement

Under this inquiry, the government's chosen means must be "the least restrictive alternative" that would achieve its goals.[21] A law would not be necessary to achieve its ends if the government could accomplish the same result while inflicting lesser burdens on protected rights.[22]

Underinclusive

In identifying the requirements of narrow tailoring, the Supreme Court often says that governmental infringements on fundamental rights must not be underinclusive: A statute will not survive strict scrutiny if it fails to regulate activities that pose substantially the same threats to the government's purportedly compelling interest as the conduct that the government prohibits. Underinclusive regulations "diminish the credibility of the government's rationale" for infringing on constitutional rights and generate suspicion that the selective targeting betrays an impermissible motive. Even absent concern about governmental motives, the demand that restrictions on constitutional rights are not underinclusive reflects an insistence that the government does not infringe on rights when doing so will predictably fail to achieve purportedly justifying goals.[23]

Overinclusive

Just as the Supreme Court says that the narrow tailoring requirement forbids or at least strongly disfavors underinclusive statutes, it insists that "overinclusive" statutes also fail strict judicial scrutiny. The prohibition against overinclusiveness suggests that a statute might be condemned for lack of narrow tailoring if it circumscribes an overly broad swath of constitutionally protected actions.[24]

---

[19] *State v. J.P.*, 907 So.2d 1101 (Fla. 2004); *Winfield v. Div. of Pari–Mutuel Wagering*, 477 So.2d 544 (Fla.1985) (explaining that where law intrudes on fundamental right to privacy guaranteed in Florida's Constitution, the State must demonstrate that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means).

[20] *See generally* Richard H. Fallon, Jr., Strict Judicial Scrutiny, 54 UCLA Law Review 1267 (2007).

[21] *Ashcroft v. ACLU*, 542 U.S. at 666; *see Fla. Star v. B.J.F.*, 491 U.S. 524, 538 (1989) (striking down a governmental action in part because less speech-restrictive alternatives were available).

[22] Fallon, Strict Judicial Scrutiny, 54 UCLA Law Review at p.1326.

[23] *Id.* at p. 1327; *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993) ("It is established in our strict scrutiny jurisprudence that 'a law cannot be regarded as protecting an interest "of the highest order" ... when it leaves appreciable damage to that supposedly vital interest unprohibited."' (quoting Fla. Star, 491 U.S. at 541-42 (Scalia, J., concurring in part).

[24] *Id.* at p.1328; *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002) ("[t]he overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process.").

An Alternative Standard of Judicial Review for Emergencies

As a practical matter, a substantial number of federal and state courts have utilized a different standard of judicial review for infringements to constitutional rights and fundamental liberties during the COVID-19 pandemic.[25] The COVID-19 standard of review appears to downgrades the level of scrutiny judges give to state infringements on fundamental rights from strict scrutiny to a rational basis test.[26] The COVID-19 standard of review appears to vindicate government infringement on fundamental rights and liberties during a 'crisis' or 'emergency.' The first court to iterate the COVID-19 standard of judicial review was the Fifth Circuit U.S. Court of Appeals in the case of *In re Abbott*.[27]

Since the COVID-19 standard was first used in *In re Abbott*, the U.S. Supreme Court has supported this type of analysis in *South Bay United Pentecostal Church v. Newsom* (May 29, 2020) and criticized it in *Roman Catholic Diocese of Brooklyn v. Cuomo* (November 25, 2020).[28] In the latter case, Justice Gorsuch begins his concurring opinion by stating:

> "Government is not free to disregard the First Amendment in times of crisis. At a minimum, that Amendment prohibits government officials from treating religious exercises worse than comparable secular activities, unless they are pursuing a compelling interest and using the least restrictive means available. Yet recently, during the COVID pandemic, certain States seem to have ignored these long-settled principles."

In re Abbott

On April 7, 2020, the Fifth Circuit decided the case of *In re Abbott*. In this case, abortion services providers in Texas challenged Governor Abbott's executive order requiring health care professionals and facilities to postpone non-essential surgeries and procedures to preserve critical medical resources to fight the COVID-19 pandemic. The United States District Court initially entered a temporary restraining order (TRO) barring the executive order's enforcement as applied to non-emergency medication abortions and surgical abortions. Governor Abbott and state officials petitioned for a writ of mandamus from the Fifth Circuit. The Fifth Circuit held that the district court abused its discretion by failing to apply the legal framework governing state authority during a public health crisis. The Fifth Circuit concluded that the executive order was

---

[25] *See Hartman v. Acton*, 2020 WL 1932896 (S.D. Ohio 2020); *Cassell v. Snyders*, 2020 WL 2112374 (N.D. Illinois 2020); *SH3 Health Consulting, LLC v. Page*, 2020 WL 2308444 (E.D. Missouri 2020); *Givens v. Newsom*, 2020 WL 2307224 (E.D. California 2020).

[26] Under the rational basis standard of review, legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. *Lawrence v. Texas*, 539 U.S. 558, 579 (2003).

[27] *In re Abbott*, 954 F.3d 772 (April 7, 2020). On January 25, 2021, The Supreme Court granted a writ of certiorari in this case and vacated the judgement. The Court remanded the case to the United States Court of Appeals for the Fifth Circuit with instructions to dismiss the case as moot. *See Planned Parenthood v. Abbott*, 2021 WL 231539, No. 20-305 (Jan. 25, 2021).

[28] *Compare South Bay United Pentecostal Church v. Newsom*, 140 S.Ct. 1613 (May 29, 2020)("Our Constitution principally entrusts the safety and the health of the people to the politically accountable officials of the States to guard and protect.") *with Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (Nov. 25, 2020)("Nothing in *Jacobson* purported to address, let alone approve, such serious and long-lasting intrusions into settled constitutional rights… Why have some mistaken this Court's modest decision in *Jacobson* for a towering authority that overshadows the Constitution during a pandemic? In the end, I can only surmise that much of the answer lies in a particular judicial impulse to stay out of the way in times of crisis. But if that impulse may be understandable or even admirable in other circumstances, we may not shelter in place when the Constitution is under attack. Things never go well when we do.").

related to the COVID-19 public health crisis and was not in palpable conflict with the U.S. Constitution.[29] This standard of review was fully articulated by the Fifth Circuit as follows:

> "The bottom line is this: when faced with a society-threatening epidemic, a state may implement emergency measures that curtail constitutional rights so long as the measures have at least some 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. Courts may ask whether the state's emergency measures lack basic exceptions for extreme cases, and whether the measures are pretextual—that is, arbitrary or oppressive. At the same time, however, courts may not second-guess the wisdom or efficacy of the measures."[30]

This standard of review is based on the Supreme Court case *Jacobson v. Commonwealth of Massachusetts*.[31] *Jacobson* was decided in 1905 before the judiciary's formulation and adoption of the strict scrutiny standard of review.

Court Rulings on Emergency Actions by Florida Political Subdivisions during COVID-19

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[32] 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.[33] These parties claimed that Walton County's ordinance constituted a Fifth Amendment Takings,[34] 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.

---

[29] *In re Abbott*, 954 F.3d 772 (5th Cir. 2020)
[30] *Id.* at 784-785
[31] *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905)
[32] 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*."
[33] *Dodero v. Walton County*, N.D. Fla. 2020, Case No.: 3:20cv5358-RV/HTC
[34] 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.”

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.[35]

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.[36] 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."[37]

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.[38] On July 27, 2020, Circuit Court Judge John C. Cooper upheld the ordinance as constitutional. In his ruling, Judge Cooper states that:

> "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 relies explicitly on the standard of judicial review iterated in *In re Abbott* when making his ruling:

> "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

[35] 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."
[36] *Green v. Alachua County*, Case No. 2020-CA-001249, Fla. 8th Cir. Ct.
[37] *Id.*
[38] *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).

F. 3d 772, 778 (5th 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)."[39]

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.[40]

On November 4, 2020, Florida's Third District Court of Appeal reversed a trial court injunction that enjoined Miami-Dade County from enforcing a late-night curfew meant to address the transmission of COVID-19.[41] In this case, the court found that Governor DeSantis' executive order[42] 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.

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 specifically 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."[43]

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

[39] *Id.* at 8

[40] 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."

[41] *Miami-Dade County v. Miami Gardens Square One, Inc*., --- So.3d ----, 2020 WL 6472542 (Fla. 3rd DCA Nov. 4, 2020).

[42] EO 20-244 (Sep. 25, 2020)

[43] *Id.* at 5

entertainment establishments licensed to serve food and libations in Broward County filed a lawsuit challenging the curfew.[44]

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:

SB 1924 amends s. 252.38, F.S., to establish that any emergency action imposed by a political subdivision, which curtails or infringes on the rights of private individuals, must be narrowly tailored to serve a compelling public health or safety purpose, and be limited in duration, applicability, and scope to reduce any infringement on individual liberty to the greatest extent possible.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[44] *828 Management, LLC v. Broward county*, 2020 WL 7635169 (S.D. Fla. Dec. 21, 2020).

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:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the section 252.38 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.