

By the Committee on Community Affairs; and Senator Diaz

578-02921-21

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1 A bill to be entitled

2 An act relating to emergency management powers of
3 political subdivisions; amending s. 252.38, F.S.;
4 specifying that a political subdivision has the burden
5 of proving the proper exercise of its police power in
6 the issuance of certain emergency orders; authorizing
7 the Governor or the Legislature to invalidate
8 emergency measures issued by a political subdivision
9 under specified conditions; amending s. 252.46, F.S.;
10 providing for the automatic expiration of emergency
11 orders issued by a political subdivision; authorizing
12 the extension of such orders if certain conditions are
13 met; prohibiting a political subdivision from issuing
14 a subsequent order for the same emergency that is
15 substantially similar to the expired order; providing
16 an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

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

22 252.38 Emergency management powers of political
23 subdivisions.—Safeguarding the life and property of its citizens
24 is an innate responsibility of the governing body of each
25 political subdivision of the state. However, political
26 subdivisions are given police powers to preserve, not impair,
27 private rights. Therefore, a political subdivision that deprives
28 any person of a constitutional right, fundamental liberty,
29 statutory right, or property to address a purported emergency

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30 bears the burden of proving that the exercise of police power is
31 narrowly tailored, serves a compelling governmental interest,
32 and accomplishes the intended goal through the use of the least
33 intrusive means.

34 (1) COUNTIES.—

35 (a) In order to provide effective and orderly governmental
36 control and coordination of emergency operations in emergencies
37 within the scope of ss. 252.31-252.90, each county within this
38 state shall be within the jurisdiction of, and served by, the
39 division. Except as otherwise provided in ss. 252.31-252.90,
40 each local emergency management agency shall have jurisdiction
41 over and serve an entire county. Unless part of an
42 interjurisdictional emergency management agreement entered into
43 pursuant to paragraph (3) (b) which is recognized by the Governor
44 by executive order or rule, each county must establish and
45 maintain such an emergency management agency and shall develop a
46 county emergency management plan and program that is coordinated
47 and consistent with the state comprehensive emergency management
48 plan and program. Counties that are part of an
49 interjurisdictional emergency management agreement entered into
50 pursuant to paragraph (3) (b) which is recognized by the Governor
51 by executive order or rule shall cooperatively develop an
52 emergency management plan and program that is coordinated and
53 consistent with the state comprehensive emergency management
54 plan and program.

55 (b) Each county emergency management agency created and
56 established pursuant to ss. 252.31-252.90 shall have a director.
57 The director must meet the minimum training and education
58 qualifications established in a job description approved by the

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59 county. The director shall be appointed by the board of county
60 commissioners or the chief administrative officer of the county,
61 as described in chapter 125 or the county charter, if
62 applicable, to serve at the pleasure of the appointing
63 authority, in conformance with applicable resolutions,
64 ordinances, and laws. A county constitutional officer, or an
65 employee of a county constitutional officer, may be appointed as
66 director following prior notification to the division. Each
67 board of county commissioners shall promptly inform the division
68 of the appointment of the director and other personnel. Each
69 director has direct responsibility for the organization,
70 administration, and operation of the county emergency management
71 agency. The director shall coordinate emergency management
72 activities, services, and programs within the county and shall
73 serve as liaison to the division and other local emergency
74 management agencies and organizations.

75 (c) Each county emergency management agency shall perform
76 emergency management functions within the territorial limits of
77 the county within which it is organized and, in addition, shall
78 conduct such activities outside its territorial limits as are
79 required pursuant to ss. 252.31-252.90 and in accordance with
80 state and county emergency management plans and mutual aid
81 agreements. Counties shall serve as liaison for and coordinator
82 of municipalities' requests for state and federal assistance
83 during postdisaster emergency operations.

84 (d) During a declared state or local emergency and upon the
85 request of the director of a local emergency management agency,
86 the district school board or school boards in the affected area
87 shall participate in emergency management by providing

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88 facilities and necessary personnel to staff such facilities.
89 Each school board providing transportation assistance in an
90 emergency evacuation shall coordinate the use of its vehicles
91 and personnel with the local emergency management agency.

92 (e) County emergency management agencies may charge and
93 collect fees for the review of emergency management plans on
94 behalf of external agencies and institutions. Fees must be
95 reasonable and may not exceed the cost of providing a review of
96 emergency management plans in accordance with fee schedules
97 established by the division.

98 (2) MUNICIPALITIES.—Legally constituted municipalities are
99 authorized and encouraged to create municipal emergency
100 management programs. Municipal emergency management programs
101 shall coordinate their activities with those of the county
102 emergency management agency. Municipalities without emergency
103 management programs shall be served by their respective county
104 agencies. If a municipality elects to establish an emergency
105 management program, it must comply with all laws, rules, and
106 requirements applicable to county emergency management agencies.
107 Each municipal emergency management plan must be consistent with
108 and subject to the applicable county emergency management plan.
109 In addition, each municipality must coordinate requests for
110 state or federal emergency response assistance with its county.
111 This requirement does not apply to requests for reimbursement
112 under federal public disaster assistance programs.

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

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

116 1. To appropriate and expend funds; make contracts; obtain

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117 and distribute equipment, materials, and supplies for emergency
118 management purposes; provide for the health and safety of
119 persons and property, including emergency assistance to the
120 victims of any emergency; and direct and coordinate the
121 development of emergency management plans and programs in
122 accordance with the policies and plans set by the federal and
123 state emergency management agencies.

124 2. To appoint, employ, remove, or provide, with or without
125 compensation, coordinators, rescue teams, fire and police
126 personnel, and other emergency management workers.

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

130 4. To assign and make available for duty the offices and
131 agencies of the political subdivision, including the employees,
132 property, or equipment thereof relating to firefighting,
133 engineering, rescue, health, medical and related services,
134 police, transportation, construction, and similar items or
135 services for emergency operation purposes, as the primary
136 emergency management forces of the political subdivision for
137 employment within or outside the political limits of the
138 subdivision.

139 5. To request state assistance or invoke emergency-related
140 mutual-aid assistance by declaring a state of local emergency in
141 the event of an emergency affecting only one political
142 subdivision. The duration of each state of emergency declared
143 locally is limited to 7 days; it may be extended, as necessary,
144 in 7-day increments. Further, the political subdivision has the
145 power and authority to waive the procedures and formalities

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146 otherwise required of the political subdivision by law
147 pertaining to:

148 a. Performance of public work and taking whatever prudent
149 action is necessary to ensure the health, safety, and welfare of
150 the community.

151 b. Entering into contracts.

152 c. Incurring obligations.

153 d. Employment of permanent and temporary workers.

154 e. Utilization of volunteer workers.

155 f. Rental of equipment.

156 g. Acquisition and distribution, with or without
157 compensation, of supplies, materials, and facilities.

158 h. Appropriation and expenditure of public funds.

159 (b) Upon the request of two or more adjoining counties, or
160 if the Governor finds that two or more adjoining counties would
161 be better served by an interjurisdictional arrangement than by
162 maintaining separate emergency management agencies and services,
163 the Governor may delineate by executive order or rule an
164 interjurisdictional area adequate to plan for, prevent,
165 mitigate, or respond to emergencies in such area and may direct
166 steps to be taken as necessary, including the creation of an
167 interjurisdictional relationship, a joint emergency plan, a
168 provision for mutual aid, or an area organization for emergency
169 planning and services. A finding of the Governor pursuant to
170 this paragraph shall be based on one or more factors related to
171 the difficulty of maintaining an efficient and effective
172 emergency prevention, mitigation, preparedness, response, and
173 recovery system on a unijurisdictional basis, such as:

174 1. Small or sparse population.

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175 2. Limitations on public financial resources severe enough
176 to make maintenance of a separate emergency management agency
177 and services unreasonably burdensome.

178 3. Unusual vulnerability to emergencies as evidenced by a
179 past history of emergencies, topographical features, drainage
180 characteristics, emergency potential, and presence of emergency-
181 prone facilities or operations.

182 4. The interrelated character of the counties in a
183 multicounty area.

184 5. Other relevant conditions or circumstances.

185 (4) INVALIDATION OF CERTAIN EMERGENCY MEASURES.—The
186 Governor, or the Legislature by concurrent resolution, may at
187 any time invalidate an order, an ordinance, a proclamation, a
188 rule, or any other measure issued by a political subdivision to
189 address a purported emergency if the Governor or the Legislature
190 determines that such order unnecessarily restricts a
191 constitutional right, fundamental liberty, or statutory right.

192 Section 2. Subsection (4) is added to section 252.46,
193 Florida Statutes, to read:

194 252.46 Orders and rules.—

195 (4) An order issued by a political subdivision shall
196 automatically expire 10 days after its issuance; however, such
197 an order may be extended before its expiration by a majority
198 vote of the governing body of the political subdivision if
199 deemed necessary. Upon the expiration of an order, a political
200 subdivision may not issue a substantially similar order to
201 respond to the same emergency.

202 Section 3. This act shall take effect July 1, 2021.