

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 Military and Veterans Affairs, Space, and Domestic Security

BILL: SB 2006

INTRODUCER: Senator Burgess

SUBJECT: Emergency Management

DATE: March 15, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Caldwell	MS	Pre-meeting
2.		AP	
3.		RC	

I. Summary:

SB 2006 amends the State Emergency Management Act to better address the threat posed by a pandemic or other public health emergency.

More particularly, the bill:

- Specifies that the State Emergency Management Act applies to pandemics and other public health emergencies.
- Requires the Division of Emergency Management (division) to include in the state comprehensive emergency management plan provisions addressing public-health-emergency preparedness, response, recovery, and mitigation. The division must develop the provisions in consultation with the Department of Health and the Agency for Health Care Administration.
- Requires the division to maintain an inventory of state-owned personal protective equipment.
- Amends several of the division's statutory duties to specify that those duties pertain to public health emergencies. For example, the bill requires the division's biennial report to the Legislature and the Governor to include the state's capability to respond to a public health emergency. Additionally, the report must be provided to the Chief Justice of the Florida Supreme Court.
- Requires a state contract with a provider of care for a person with special needs to include the contractor's procedure for providing essential services during a public health emergency.
- Requires the Division of Emergency Management's statewide emergency shelter plan to address sheltering Floridians during a pandemic that necessitates physical distancing.
- Provides additional oversight and transparency regarding exercises of the executive branch's emergency powers, including that it:
 - Authorizes the Legislature to pass a concurrent resolution to terminate orders and directives issued under a state of emergency, instead of only the state of emergency itself.

- Requires the Governor, if he or she closes schools or businesses, to state specific reasons why the schools or businesses need to close and to reassess the decision regularly.
- Requires the Governor to file any emergency declaration or order with the Division of Administrative Hearings.
- Requires a state agency to submit to the Legislature a detailed spending plan, when possible, before accepting federal grants or private donations.

The bill takes effect July 1, 2021.

II. Present Situation:

The State Emergency Management Act is the legal framework for this state's emergency management apparatus. The Act created the Division of Emergency Management within the Executive Office of the Governor and granted the division with powers and duties necessary to mitigate the vulnerability of life, property, and economic prosperity due to natural and manmade disasters. The Act also delineates the Governor's authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. This authority is subject in some aspects to the Legislature's authority. For example, the Legislature may pass a concurrent resolution to end a state of emergency declared by the Governor.

The remainder of the Present Situation is set forth in the Effect of Proposed Changes section to provide immediate context for the changes made by the bill.

III. Effect of Proposed Changes:

State Emergency Management Act

Present Situation:

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.¹ These emergencies and disasters threaten people, property, and the economy.²

Legislative Intent

Accordingly, Legislature passed the Act with the intent to reduce the state's vulnerability to these circumstances and to prepare to respond to them.³ The legislative intent also includes promoting the state's emergency readiness through enhanced coordination, long-term planning, and adequate funding.⁴

¹ Section 252.311(1), F.S.

² *Id.*

³ Section 252.311(2), F.S.

⁴ *Id.*

Effect of Proposed Changes:

The bill provides that the State Emergency Management Act's legislative intent includes:

- Preparing for and efficiently responding to public health emergencies.
- Minimizing the negative effects of a pandemic or other extended state of emergency; these negative effects include school and business closures, which can negatively impact families and the economy.
- Transparency of all aspects of emergency preparedness, response, and recovery.

Florida Division of Emergency Management

Present situation:

In the State Emergency Management Act, the Legislature created the Division of Emergency Management within the Executive Office of the Governor.⁵ The division is responsible for "maintaining a comprehensive statewide program of emergency management."⁶ 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."⁷

Additionally, the division is responsible for "carrying out" the State Emergency Management Act.⁸ The Act provides that this responsibility includes a list of more than 20 particular duties.⁹

State Comprehensive Emergency Management Plan

At the top of the division's statutory list of duties is the creation of a state comprehensive emergency plan.¹⁰ The plan must be integrated into and coordinated with the plans and programs of the federal government.¹¹ The plan must be submitted to the Senate President, the Speaker of the House of Representatives, and the Governor by February 1 of every even-numbered year.¹² Additionally, the plan must be adopted as a rule under ch. 120, F.S.¹³

As to 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.
- 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.

⁵ See ss. 252.32(1) and 252.34(3), F.S.

⁶ Section 252.35(1), F.S.

⁷ *Id.*

⁸ Section 252.35(2), F.S.

⁹ See *Id.*

¹⁰ Section 252.35(2)(a), F.S.

¹¹ Section 252.35(2), F.S.

¹² *Id.*

¹³ *Id.*

- Assign lead and support responsibilities to state agencies and personnel.¹⁴

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.¹⁵

Effect of Proposed Changes:

In addition to the above provisions, the bill requires the division to include provisions addressing public health emergency preparedness, response, recovery, and mitigation. In developing these provisions, the division must consult with the Department of Health, the Agency for Health Care Administration, and other agencies as determined appropriate by the division.

Moreover, where current law requires the plan to establish a system of communication and warning regarding emergencies, the bill specifies that these emergencies include public health emergencies.

Other Duties Under the State Emergency Management Act

Present Situation:

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.¹⁶

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 252.35(2)(b)-(y), F.S.

Effect of Proposed Changes:

The bill changes each of the above duties to account for public health emergencies. For instance, the bill requires the statewide public awareness and educational programs to include information on personal preparation for a public health emergency. And the biennial report on the state's emergency preparedness must be sent to the Chief Justice of the Florida Supreme Court and include the state's emergency management capabilities related to public health emergencies.

Regarding the registry of persons with special needs and their need for shelter accommodations, the division must maintain information on options that provide for physical distancing during a public health emergency.

In addition to modifying the duties in the above list, the bill also specifies that where existing law provides that the division must "establish a statewide system to facilitate the transport and distribution of essentials in commerce," these essentials include personal protective equipment.

Emergency Planning Provisions in State Contracts

Present Situation:

State agencies that contract with providers for the care of persons with disabilities or limitations that make the persons dependent upon the care of others must include emergency and disaster planning provisions in the contracts.¹⁷ The provisions must be included when a contract is initiated and upon its renewal.¹⁸ The provisions must include:

- The designation of an emergency coordinating officer.
- A procedure to contact, prior to or immediately following an emergency or disaster, all persons, on a priority basis, who need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities and whose care is provided under the contract.
- A procedure to help persons who would need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities register with the local emergency management agency.
- A procedure to dispatch the emergency coordinating officer or other staff members to special needs shelters to assist clients with special needs, if necessary.
- A procedure for providing the essential services the organization currently provides to special needs clients in preparation for, during, and following a disaster.¹⁹

¹⁷ Section 252.356, F.S.

¹⁸ *Id.*

¹⁹ Section 252.356(1)-(5), F.S.

Effect of Proposed Changes:

The bill specifies that the disasters contemplated in the last provision listed above include public health emergencies.

Emergency Powers of the Governor*Present situation:*

If the Governor finds that an emergency has occurred or is imminent, he or she must declare a state of emergency.²⁰ The state of emergency continues until the Governor terminates it, or until more than 60 days pass, whichever is sooner.²¹ However, the Legislature may end a state of emergency by passing a concurrent resolution.²²

The Florida Statutes acknowledge that the Governor “is responsible for meeting the dangers presented to this state and its people by emergencies.”²³ 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.²⁴ Moreover, he or she may issue executive orders, proclamations, and rules, all of which have the “force and effect of law.”²⁵

Effect of Proposed Changes:

The bill increases the transparency and legislative oversight of an exercise of the executive branch’s emergency powers. Under the bill, the legislature may pass a concurrent resolution to terminate orders and directives issued during a declared emergency, as well as the declaration of emergency itself. Additionally, if the Governor orders schools or businesses to close or operate in a restricted manner he or she must state specific reasons for the action and reassess the situation regularly. Moreover, any declaration of emergency or order issued under it must be filed with the Division of Administrative Hearings. The Division of Administrative Hearings must index the declarations and orders, make them available in a searchable format, and clearly identify the orders that are in effect at any given time.

As an additional means of oversight of the Governor’s emergency power, the bill requires any suspension of regulatory statutes to be consistent with legislative policy and intent and to expire no later than 30 days after the initial suspension; however, the suspension may be renewed. Finally, the bill requires the Governor to report to the presiding officers of the Legislature whenever he or she transfers direction, personnel, or functions of state agencies.

²⁰ Section 252.36(2), F.S.

²¹ *Id.*

²² Section 252.36(2), F.S.

²³ Section 252.36(1), F.S.

²⁴ *Id.*

²⁵ Section 252.36(1)(b), F.S.

Emergency Coordination Officers

Present Situation:

The head of each of the following state agencies must select a point-person for emergency management issues—called an emergency management officer—and an alternate from within the agency:

- Each executive department²⁶
- Each water management district
- The Public Service Commission
- The Fish and Wildlife Conservation Commission
- The Department of Military Affairs.²⁷

Each emergency coordination officer must:

- Coordinate with the Division of Emergency Management on emergency preparedness issues;
- Prepare and maintain emergency preparedness and postdisaster response and recovery plans for the agency;
- Maintain rosters of personnel to assist in disaster operations; and
- Coordinate appropriate training for agency personnel.²⁸

Additionally, an agency's emergency coordination officer must ensure that each state agency and facility, such as a prison or office building, has a disaster preparedness plan.²⁹ The plan must be coordinated with the applicable local emergency management agency and approved by the Division of Emergency Management.³⁰

Regarding its contents, the plan must:

- Outline a comprehensive and effective program to ensure continuity of essential state functions under all circumstances.
- Identify a baseline of preparedness for a full range of potential emergencies to establish a viable capability to perform essential functions during any emergency or other situation that disrupts normal operations.
- Include, at a minimum, the following elements:
 - Identification of essential functions, programs, and personnel;
 - Procedures to implement the plan and personnel notification and accountability;
 - Delegations of authority and lines of succession;
 - Identification of alternative facilities and related infrastructure, including those for communications;
 - Identification and protection of vital records and databases; and
 - Schedules and procedures for periodic tests, training, and exercises.³¹

²⁶ Examples include the Department of Corrections, Department of Health, and Department of Management Services. See s. 20.03(2), F.S.

²⁷ Section 252.365(1), F.S.

²⁸ Section 252.365(2), F.S.

²⁹ Section 252.365(3), F.S.

³⁰ *Id.*

³¹ Section 252.365(3)(a) and (b), F.S.

Effect of Proposed Changes:

The bill specifies that where the law requires each agency and facility to have a comprehensive plan to ensure continuity “under all circumstances,” these circumstances include a pandemic or other public health emergency. Additionally, where current law requires the plan to provide for a “baseline of preparedness,” the bill specifies that “this baseline must consider and include preparedness for rapid and large-scale increases in the public’s need to access government services through technology or other means during an emergency such as the COVID-19 pandemic.”

The plan also must include provisions regarding the availability of, and distribution plans for, personal protective equipment. Finally, the plan must be updated each year to include provisions related to pandemics and other public health emergencies.

Financing for Emergencies*Present Situation:*

In the State Emergency Management Act, the Legislature states its intent that “funds to meet emergencies always be available.”³²

The Act also provides the legislative intent that the costs of dealing with an emergency be paid from funds regularly appropriated to state and local agencies.³³ However, if the Governor deems it necessary during a state of emergency, he or she may make funds available:

- By transferring and expending moneys appropriated for other purposes;
- By transferring and expending moneys out of any unappropriated surplus funds; or
- From the Budget Stabilization Fund.³⁴

Following the expiration or termination of a state of emergency, the Governor may, subject to approval by the Legislative Budget Commission, transfer moneys with a budget amendment to satisfy the budget authority granted for such emergency.³⁵

The Act authorizes the state to receive grants from the federal government, as well as gifts, donations, or other forms of financial assistance from individuals or corporations.³⁶

Effect of Proposed Changes:

Under the bill, if the Governor covers emergency costs by making funds available in any of the ways listed above, he or she may transfer moneys with a budget amendment, subject to approval by the Legislative Budget Commission, to satisfy the budget authority granted for the emergency. He or she must do so following the expiration or termination of the state of

³² Section 252.37(1), F.S.

³³ Section 252.37(2), F.S.

³⁴ *Id.*

³⁵ Section 252.37(2), F.S.

³⁶ Section 252.37(4), F.S.

emergency (as under current law), or 6 months after the expiration or termination of the initial state of emergency, whichever occurs earlier.

Under the bill, if a state agency or political subdivision wishes to accept federal grants or private donations, it must submit a detailed spending plan for the money to the presiding officers of the Legislature and the chairs of the legislative appropriation committees. When this pre-submission of the agency's plan is not possible, a state agency or political subdivision must nonetheless submit the plan no later than 30 days after the initiation of any expenditures and for each additional 30 day of the emergency.

Public Shelter Space

Present Situation:

The State Emergency Management Act requires the Division of Emergency Management to administer a program to survey buildings offered by the building's owners as hurricane shelters.³⁷ The purpose of the survey is to determine whether the building is "appropriately designed and located" to serve as a shelter.³⁸ A shelter could be publicly or privately owned, such as a corporation's warehouse or a public university's arena.³⁹

By January 31 of each even-numbered year, the division must submit a statewide emergency shelter plan to the Governor and Cabinet for approval.⁴⁰ The plan must identify the location and square footage of special needs shelters during the next 5 years.⁴¹ Additionally, the plan must include information on the availability of shelters that accept pets.⁴²

Effect of Proposed Changes:

The bill requires the plan to address the hurricane shelter needs of the state, including its needs during a health crisis that necessitates physical distancing.

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.

³⁷ Section 252.37(2)(a), F.S.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Section 252.37(2)(b), F.S.

⁴¹ *Id.*

⁴² *Id.*

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:

The bill could have a positive fiscal impact in the context of a public health emergency as the bill creates a presumption that businesses should remain open.

C. Government Sector Impact:

The bill could have a negative fiscal impact because it increases the duties of the Division of Emergency Management and other executive agencies regarding pandemic preparation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 252.311, 252.34, 252.35, 252.355, 252.356, 252.359, 252.36, 252.365, 252.37, 252.38, 252.385, 252.44, and 377.703.

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.

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