

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7047 PCB PPE 21-01 Emergency Management

SPONSOR(S): Pandemics & Public Emergencies Committee, Leek

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Pandemics & Public Emergencies Committee	14 Y, 4 N	Nations	Dearden
1) Appropriations Committee	22 Y, 2 N	Harrington	Pridgeon
2) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends the State Emergency Management Act (Act) to better address the threat posed by pandemics or other public health emergencies. The bill provides that it is in the intent of the Legislature to minimize the negative effects of extended emergencies. It is also the intent that all aspects of emergency preparedness, response, and recovery be transparent to the public to the greatest extent possible. As such, the bill clarifies that the Act applies to public health emergencies and requires related planning and preparation for such emergencies; provides for greater transparency related to emergency orders, delegated emergency powers, and emergency spending; and restricts certain local government emergency orders that restrict individual liberties.

More specifically, the bill:

- Requires the State Health Officer to develop a public health emergency plan to ensure the state is prepared for every foreseeable public health emergency;
- Requires the Division of Emergency Management (Division) to maintain an inventory of state-owned personal protective equipment;
- Increases transparency related to emergency orders, proclamations, and rules by requiring that such orders, proclamations, and rules list the statute or rule that is being amended or waived and list the expiration date;
- Requires all emergency proclamations and rules be posted online in a searchable format;
- Provides for increased reporting and audits during a long-term emergency;
- Provides that the Governor can spend from funds appropriated for other purposes or from the Emergency Preparedness and Response Fund, but must submit a budget amendment before he or she can spend from unappropriated general revenue or the Budget Stabilization Fund;
- Provides that the State Health Officer is responsible for reporting the number of cases and deaths during public health emergencies;
- Provides that the district medical examiner must assist the State Health Officer with identifying and reporting deaths upon request;
- Provides that a significant emergency order issued by a political subdivision must be narrowly tailored to reduce any infringement on individual liberty to the greatest extent possible and may not exceed a total duration of 42 days; and
- Authorizes the Governor, Lieutenant Governor, Division Director, the Surgeon General, the President of the Senate, and the Speaker of the House of Representatives to conduct public service announcements during a declared state of emergency.

The bill will have a negative fiscal impact on state expenditures and does not appear to have a fiscal impact on local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Emergency Management Act

Chapter 252, F.S., governs emergency management. It confers upon the Governor, the Division of Emergency Management (Division),¹ and the governing body of each county and municipality certain emergency powers in the event of emergencies² and disasters³ resulting from natural,⁴ technological,⁵ or manmade⁶ causes to ensure preparations of the state will be adequate to deal with, reduce vulnerability to, and recover from such emergencies and disasters; to provide for the common defense and to protect the public peace, health, and safety; and to preserve the lives and property of the people of the state.⁷

The State Emergency Management Act⁸ (Act) authorizes the Governor to assume or delegate direct operational control over all or any part of emergency management functions in the event of an emergency.⁹ This authority includes issuing executive orders, proclamations, and rules that have the force and effect of law.¹⁰ The Act specifically authorizes the Governor to use all resources of state government and counties and municipalities of the state as reasonably necessary to cope with the emergency.¹¹ Although the emergency powers reside in the Governor, the Governor may delegate certain powers to the State Coordinating Officer to manage and coordinate emergency efforts.¹²

The Act, in part, authorizes the Governor to:

- Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of any state agency, if strict compliance would in any way prevent, hinder, or delay necessary action in coping with the emergency.
- Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services.
- Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles; however, the Governor may not seize, take, or confiscate firearms that are lawfully possessed, unless a person is engaged in the commission of a criminal act.
- Make provision for the availability and use of temporary emergency housing.

¹ The Division is established within the Executive Office of the Governor as a separate budget entity. It is responsible for all professional, technical, and administrative support functions necessary to carry out its responsibilities under part I of ch. 252, F.S. The director of the Division is appointed by and serves at the pleasure of the Governor, and is the head of the division for all purposes. Section 14.2016(1), F.S.

² “Emergency” means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. Section 252.34(4), F.S.

³ “Disaster” means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States. Section 252.34(2), F.S.

⁴ “Natural emergency” means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. Section 252.34(8), F.S.

⁵ “Technological emergency” means an emergency caused by technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident. Section 252.34(10), F.S.

⁶ “Manmade emergency” means an emergency caused by an action against persons or society, including, but not limited to, enemy attack, sabotage, terrorism, civil unrest, or other action impairing the orderly administration of government. Section 252.34(7), F.S.

⁷ Section 252.32, F.S.

⁸ Sections 252.31-252.60, F.S., are known and cited as the “State Emergency Management Act.”

⁹ Section 252.36(1)(a), F.S.

¹⁰ Section 252.36(1)(b), F.S.

¹¹ Section 252.36(5)(b), F.S.

¹² The State Coordinating Officer (SCO) is the authorized representative of the Governor to manage and coordinate state and local emergency response and recovery efforts. The SCO is provided the authority to commit any and all state resources necessary to cope with the emergency and the authority to exercise those powers in accordance with ss. 252.36(3)(a) and 252.36(5)-(10), F.S. Executive Order 20-52 designated the Director of the Division as the SCO and the State Health Officer and Surgeon General as a Deputy SCO.

- Take effective measures for limiting or suspending lighting devices and appliances, gas and water mains, electric power distribution, and all other utility services in the general public interest.
- Take measures concerning the conduct of civilians, the movement and cessation of movement of pedestrian and vehicular traffic at certain times, the calling of public meetings and gatherings, and the evacuation and reception of the civilian population, as provided in the emergency management plan of the state and counties and municipalities.
- Authorize businesses and their employees who sell commodities¹³ to exceed the times of curfews for ensuring that the supply of commodities are made available to the public and direct local law enforcement to assist and accommodate those businesses and their employees in ensuring that commodities are available in coping with the emergency.¹⁴

Governor

Emergency powers are only exercised when, and if, a state of emergency or disaster or impeding emergency or disaster has been declared or a direct attack on the State of Florida occurs. During a declared state of emergency, the Governor must take such action, give such direction, and employ such measures as may be reasonable and necessary to secure compliance with the State Emergency Management Act, the Florida Emergency Planning and Community Right-to-Know Act, and all orders and rules made pursuant thereto, to state and local law enforcement officers and agencies¹⁵ and the Department of Health and the Agency for Health Care Administration.¹⁶

The Governor must delegate emergency responsibilities to officers and agencies of the state and to counties and municipalities prior to an emergency and threat of an emergency and must use the services and facilities of existing officers and agencies of the state and counties and municipalities as the primary emergency management forces of the state. All such officers and agencies must cooperate with and extend their services and facilities to the Division, as it may require.¹⁷

During the continuance of a state of emergency, the Governor is commander in chief of the Florida National Guard and all forces available for emergency duty.¹⁸

¹³ Section 501.160(1)(a), F.S., defines the term “commodity” to mean any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency.

¹⁴ Section 252.36(5), F.S. Other powers include using all available resources to state government and each county and municipality, as reasonably necessary to cope with the emergency; subject to any applicable requirements for compensation under s. 252.43, F.S., commandeer or utilize any private property if found necessary to cope with the emergency; direct and compel the evacuation of all or part of the population from any stricken or threatened area if deemed necessary for the preservation of life or other emergency mitigation, response, or recovery; prescribe routes, modes of transportation, and destinations in connection with evacuation; control ingress and egress to and from an emergency area, the movement of persons within the area, and the occupancy of premises therein; authorize the use of forces already mobilized as the result of an executive order, rule, or proclamation to assist the private citizens of the state in cleanup and recovery operations during emergencies when proper permission to enter onto or into private property has been obtained from the property owner; and by executive order, authorize the operator of solid waste disposal facilities to extend operating hours to ensure the health, safety, and welfare of the general public.

¹⁵ Section 252.36(6), F.S.

¹⁶ Section 252.36(7), F.S.

¹⁷ Section 252.36(8), F.S.

¹⁸ Section 252.36(4), F.S.

Declaring a State of Emergency, Generally

The Governor is authorized to declare a state of emergency by executive order or proclamation when an emergency has occurred or the occurrence or threat thereof is imminent.¹⁹ A declared state of emergency is limited to 60 days, unless renewed by the Governor or terminated by the Legislature.²⁰

An executive order of a state of emergency must indicate the nature of the emergency, area or areas threatened, and conditions that have brought the emergency about or that make possible its termination.²¹ Executive orders must be promptly disseminated to bring its contents to the attention of the general public and, unless the emergency prevents or impedes, must be filed promptly with the Department of State and in the offices of the county commissioners in the counties that the order applies.²²

Declaring a state of emergency initiates certain emergency activations and authorities, such as:

- Activating the emergency mitigation, response, and recovery aspects of the state, local, and interjurisdictional emergency management plans applicable to the political subdivision or area in question; and
- Serving as the authority for the deployment and use of any forces to which the plans apply and for the use or distribution of supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to the State Emergency Management Act and the Florida Emergency Planning and Community Right-to-Know Act.²³

Dependent on the degree of the disaster or emergency, additional emergency activations or authorities may be deployed.

Emergency Spending Authority

The policy of the state is that funds to meet emergencies must always be available.²⁴ Florida law provides that it is the intent that first recourse be made to funds regularly appropriated to state and local agencies. If the Governor finds that the demands placed upon these funds in coping with a particular state emergency are unreasonably great, the Governor may make funds available by transferring and expending moneys appropriated for other purposes, unappropriated surplus funds, and funds in the Budget Stabilization Fund.²⁵ Such funds, when accessed, are appropriated through emergency budget amendments that are approved by the Governor and posted on the appropriations ledger. There is no dedicated source of funds for the Governor to use during an emergency.

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.²⁶

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.²⁷

¹⁹ Section 252.36(2), F.S.

²⁰ Section 252.36(2), F.S.

²¹ Section 252.36(2), F.S.

²² Section 252.36(2), F.S.

²³ Section 252.36(3), F.S.

²⁴ Section 252.37(1), F.S.

²⁵ Section 252.37(2), F.S.

²⁶ *Id.*

²⁷ Section 252.37(4), F.S.

Division of Emergency Management

The Division is responsible for all professional, technical, and administrative support functions necessary to carry out its responsibilities and emergency powers under part I of ch. 252, F.S. The Division must administer programs to apply rapidly all available aid to communities stricken by an emergency.²⁸ The Division is responsible for maintaining the statewide comprehensive plan for emergency management and coordinating efforts of the Federal Government with state and local government and private agencies.²⁹

In addition, the Division is responsible for state emergency planning with various responsibilities, including, in part:

- Preparing a state comprehensive emergency management plan, which is adopted as a rule pursuant to the Administrative Procedure Act.
- Adopting standards and requirements for county emergency management plans, assisting counties and municipalities in preparing and maintaining the plans, and periodically reviewing the plans for consistency with state standards.
- Cooperating with the President, the heads of the Armed Forces, and various federal emergency management agencies.
- Planning for and either procuring supplies, medicines, materials, and equipment or entering into a memorandum of agreement or open purchase orders to ensure availability of such supplies.
- Reporting biennially to the Governor and Legislature the status of emergency management capabilities of the state and its political subdivisions.
- Creating, implementing, administering, adopting, amending, and rescinding rules, programs, and plans needed to carry out emergency management.
- Doing other things necessary, incidental, or appropriate for implementing emergency management.³⁰

State Comprehensive Emergency Management Plan

The state comprehensive emergency management plan³¹ must be integrated into and coordinated with the plans and programs of the Federal Government.³² The plan must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor by February 1 of every even-numbered year.³³ Additionally, the plan must be adopted as a rule pursuant to ch. 120, F.S.³⁴

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 warnings 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.
- Assign lead and support responsibilities to state agencies and personnel.³⁵

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.

²⁸ Section 14.2016(1), F.S.

²⁹ *Id.* and s. 252.35(1), F.S.

³⁰ *See* s. 252.35, F.S.

³¹ Section 252.35(2)(a), F.S.

³² Section 252.35(2), F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

- A post-disaster relief component.³⁶

Emergency Coordination Officers

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 department;
- Each water management district;
- The Public Service Commission;
- The Fish and Wildlife Conservation Commission; and
- The Department of Military Affairs.³⁷

Each emergency coordination officer must:

- Coordinate with the Division 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.³⁸

Additionally, each emergency coordination officer must ensure that each state agency and facility, such as a prison or office building, has a disaster preparedness plan.³⁹ The plan must be coordinated with the applicable local emergency management agency and approved by the Division.⁴⁰

The disaster preparedness 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.⁴¹

Counties and Municipalities

Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each county and municipality of the state. Counties and municipalities have certain duties and responsibilities in order to provide effective and orderly governmental control and coordination of emergency operations, including a requirement that counties adopt an emergency management plan that is coordinated and consistent with the state comprehensive emergency management plan and program.⁴²

Counties must establish a local emergency management agency that serves the entire county. The director of the local emergency management agency must coordinate emergency management activities, services, and programs within the county and must serve as liaison to the Division and other

³⁶ *Id.*

³⁷ Section 252.365(1), F.S.

³⁸ Section 252.365(2), F.S.

³⁹ Section 252.365(3), F.S.

⁴⁰ *Id.*

⁴¹ Section 252.365(3)(a) and (b), F.S.

⁴² Section 252.38(1)(a), F.S.

local emergency management agencies. Each local emergency management agency must perform emergency management functions within the county in accordance with state and county emergency management plans and pursuant to ch. 252, F.S.

Counties and municipalities have the authority to declare a state of *local* emergency if an emergency affects only one political subdivision, which triggers the ability to request state assistance or invoke emergency-related mutual-aid assistance.⁴³ A state of local emergency may only be declared by a mayor, city manager, or board of county commissioners.⁴⁴ The duration of a local state of emergency is seven days, but may be extended in seven-day increments as necessary.

Counties and municipalities are authorized and empowered to make, amend, and rescind orders and rules as are necessary for emergency management purposes that are not 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.⁴⁵ All orders and rules adopted by any county or municipality have the full force and effect of law when filed in the office of the clerk or recorder of the political subdivision; however, any order or rule inconsistent with the State Emergency Management Act or the Florida Emergency Planning and Community Right-to-Know Act will be suspended to the extent that such conflict exists. Furthermore, any person violating any rule or order issued pursuant to either act is guilty of a second-degree misdemeanor and may be punished by a term of up to 60 days in jail and fines up to \$500.⁴⁶

Public Health Emergencies

The State Health Officer⁴⁷ is exclusively responsible for declaring public health emergencies,⁴⁸ which include natural or manmade occurrences that result or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters. Before declaring a public health emergency, the State Health Officer must, to the extent possible, consult with the Governor and notify the Chief of Domestic Security.⁴⁹ A public health emergency may not continue longer than 60 days unless the Governor concurs in the renewal of the declaration.

The declaration empowers the State Health Officer to take actions necessary to protect the public health, including, but not limited to:

- Directing manufacturers of prescription drugs or over-the-counter drugs to give priority shipping of specified drugs to certain pharmacies and hospitals;
- Directing pharmacies to compound bulk prescription drugs;
- Temporarily reactivating inactive licenses of certain healthcare professionals; and
- Ordering an individual to be examined, tested, vaccinated, treated, isolated, or quarantined.

The Department of Health (DOH) has the duty and authority to declare, enforce, modify, and abolish the isolation and quarantine of persons, animals, and premises as circumstances indicate for controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health (except for specified diseases). Any order issued by DOH must be immediately enforceable by a law enforcement officer under s. 381.0012, F.S.

Planning for Public Health Emergencies

Current law requires the Division to develop a comprehensive emergency management plan, provides guidance on content, and requires the Division to adopt the plan as a rule under ch. 120 and submit the

⁴³ Section 252.38(3)(a)5., F.S.

⁴⁴ 2020 State Comprehensive Emergency Management Plan, Basic Plan, p. 15.

⁴⁵ Section 252.46, F.S.

⁴⁶ See s. 252.50, F.S.

⁴⁷ The head of the Department of Health is the Surgeon General and the State Health Officer. Section 20.43, F.S.

⁴⁸ Section 381.00315, F.S.

⁴⁹ The Chief of Domestic Security is the executive director of the Department of Law Enforcement, or his designee. Section 943.0311, F.S.

plan to the Governor and legislative officers annually.⁵⁰ Current law does not expressly require the Division or DOH to develop a plan for public health emergencies, or integrate it with the comprehensive emergency management plan. However, DOH developed the Public Health and Medical Emergency Operations Plan, last updated in 2014.⁵¹

Similarly, current law requires the Division to ascertain the resource needs of the state and political subdivisions in the event of an emergency declared under ch. 252, F.S., and plan for how to ensure their availability.⁵² However, current law does not direct DOH to make a similar assessment of resource and public health infrastructure needs for public health emergencies declared under ch. 381, F.S.

Public Health Emergency Death Determinations

Death Certificates

Florida medical examiners are local district officers appointed by the Governor⁵³ to one of 25 medical examiner districts⁵⁴ under ch. 406, F.S. Medical examiners are governed by the Medical Examiners Commission (Commission), which is administratively housed within the Florida Department of Law Enforcement.⁵⁵ The Commission has authority to investigate and suspend medical examiners for violations of ch. 406, F.S.⁵⁶

Current law requires district medical examiners to determine the cause of death in certain circumstances, and to make any investigations, examinations, and autopsies necessary to make that determination, for the following deaths and circumstances:⁵⁷

- Of criminal violence.
- By accident.
- By suicide.
- Suddenly, when in apparent good health.
- Unattended by a practicing physician or other recognized practitioner.
- In any prison or penal institution.
- In police custody.
- In any suspicious or unusual circumstance.
- By criminal abortion.
- By poison.
- By disease, injury, or toxic agent resulting from employment.
- When a dead body is brought into the state without proper medical certification.
- When a body is to be cremated, dissected, or buried at sea.

In addition, medical examiners must determine the cause of death for a “death by disease constituting a threat to public health.”⁵⁸

For much of 2020, Florida medical examiners determined the cause and certified the deaths of thousands of people who died of COVID-19, because COVID-19 is a disease constituting a threat to

⁵⁰ Section 252.35(2), F.S. The Florida Comprehensive Emergency Management Plan is available online at <https://www.floridadisaster.org/dem/preparedness/natural-hazards/comprehensive-emergency-management-plan/>.

⁵¹ DOH, Bureau of Preparedness & Response, Public Health and Medical Emergency Operations Plan, Oct. 2014, available at DOH PHM EOP 100214 with edits (floridahealth.gov)(last viewed March 20, 2021).

⁵² Section 252.35(2)(g) and (p), F.S.

⁵³ Section 406.02, F.S.

⁵⁴ The Commission establishes the districts by rule. *See*, ch. 11G-5.002, F.A.C. Medical examiner district boundaries usually align with the 20 court circuits, with some variations. Fla. Dept. Law Enforcement, Medical Examiners Commission, Coverage Map: Medical Examiner Districts, available at <https://www.fdle.state.fl.us/MEC/Maps/Documents/Coverage-Map.aspx> (last viewed March 20, 2021).

⁵⁵ Section 406.02, F.S. Commission members include two active medical examiners, a funeral director, a state attorney, a public defender, a sheriff, a county commissioner, the Attorney General (or designee) and the State Surgeon General (or designee).

⁵⁶ Sections 406.06 and 406.075, F.S.

⁵⁷ Section 406.11, F.S.

⁵⁸ *Id.*

public health.⁵⁹ However, in August, the Commission determined that district medical examiners were not obligated to certify COVID-19 death cases, and authorized individual medical examiners to determine whether they would do so unless directly requested by DOH.⁶⁰ This decision was based on the overwhelming workload associated with the pandemic,⁶¹ difficulty obtaining timely and useful records from hospitals,⁶² and insufficient emergency supports for a statewide long-term effort.⁶³ Some medical examiners chose not to certify deaths for COVID-19 cases after August, others continued the practice.

Some medical examiners seemed uncertain whether the declared state of emergency made them the exclusive certifiers of COVID-19 deaths (as opposed to treating practitioners), and expressed the opinion that death certifications would be better performed by the treating practitioners.⁶⁴

Death Counts

In the event of a public health emergency on the scale of a pandemic, the federal government may issue guidance for how to officially determine the number of deaths. For example, during the COVID-19 pandemic, the federal Center for Disease Control and Prevention issued guidance for states on how to handle COVID-case deaths when submitting state-level mortality data through the National Vital Statistics System. To maintain consistent reporting, DOH reported deaths to the federal government, relying on clinician reporting to the Bureau of Epidemiology and on the death certificates completed by medical examiners (and, later, by treating practitioners). However, medical examiners debated responsibility for death counts. Commission practice is for the Commission to be the official source of a death count in an emergency, such as a hurricane, and some commissioners expressed the view that ultimate responsibility for death counts was a matter for the Commission to determine and did not involve DOH.⁶⁵

Current law does not expressly address ultimate responsibility for death counts in a public health emergency.

Public Employee Gifts

The Code of Ethics for Public Officers and Employees is intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law.⁶⁶ The Code establishes standards of conduct of elected and appointed officers and appointed officials and government employees. Among these standards are the regulation of the solicitation and acceptance of gifts. The term “gift” encompasses nearly anything of value. Under the law, a reporting individual is prohibited from soliciting any gift and from knowingly accepting a gift if

⁵⁹ The method of death certification for COVID-19 cases was established by the federal Centers for Disease Control and Prevention: the practitioner must document both immediate and underlying causes in a clinically rational progression, and document any contributing conditions, such as co-morbidities. *See, e.g.,* Department of Health and Human Services Centers for Disease Control and Prevention, Vital Statistics Reporting Guidance Report: “Guidance for Certifying Deaths Due to Coronavirus Disease 2019 (COVID-19)”, No. 3 (April 2020), available at NCHS NVSS Guidance for certifying COVID-19 deaths vsrg03-508.pdf (last viewed March 20, 2021). This method is consistent with practice standards for death certification prior to COVID-19, established by the Florida Department of Health. *See, DOH, Bureau of Vital Statistics, “Certifier Instructions for Completing the Cause-of-Death Section of the Florida Death Certificate”, available at COD Fact sheet for certifiers 9.2019.pdf (last viewed March 20, 2021); DOH, Bureau of Vital Statistics, “What the Practitioner Should Know about Certifying Cause of Death on the Florida Death Certificate”, available at Practitioners and the COD brochure v. 3.pdf (last viewed March 20, 2021).*

⁶⁰ Medical Examiners Commission, MEC Meeting Minutes, Aug. 14, 2020, at 13, available at MEDICAL EXAMINERS COMMISSION MEETING MINUTES (state.fl.us) (last viewed March 21, 2021).

⁶¹ *Id.* at 9-11, 13. Medical examiners cited backlogs ranging from 100 in Broward to 650 in Miami-Dade County, in August 2020.

⁶² *Id.* at 9.

⁶³ *Id.* at 7-9.

⁶⁴ *Id.* at 7-9. This view, and the overwhelming workload, may be supported by the fact that 55 percent of death certificates issued by medical examiners from March 5, 2020, to September 16, 2020, were flawed. Many of these did not include a clinical progression of events, subverting epidemiological analysis. Many included no clinical events at all (other than a positive COVID-19 test), failing to properly certify the death and calling into question any death count based on those certifications. Fla. House of Representatives, “Analysis of COVID Death Data”, Oct. 12, 2020, on file with committee staff.

⁶⁵ *Id.* at 12.

⁶⁶ Chapter 112, F.S.

the gift is valued over \$100. Similar provisions apply to the person giving the gift – the vendor is prohibited from giving, either directly or indirectly, a gift that has value in excess of \$100.

House Bill 1595 (2021)

House Bill 1595 (2021) creates the Emergency Preparedness and Response Trust Fund (EPR Fund) within the Executive Office of the Governor. The bill provides that the EPR Fund is the primary funding source for the Governor for purposes of preparing or responding to an emergency that exceeds regularly appropriated funding sources during a declared state of emergency.

Effect of the Bill

The bill provides that it is in the intent of the Legislature to minimize the negative effects of extended emergencies. It is also the intent that all aspects of emergency preparedness, response, and recovery be transparent to the public to the greatest extent possible. As such, the bill clarifies that the Emergency Management Act applies to public health emergencies and requires related planning and preparation for such emergencies; provides for greater transparency related to emergency orders, delegated emergency powers, and emergency spending; and restricts certain local government emergency orders that restrict individual liberties.

Public Health Emergencies

The bill inserts the term public health emergency throughout the Emergency Management Act, clarifying that the Act applies to health-related emergencies declared by the State Health Officer pursuant to s. 381.00315, F.S.

The bill requires the Division to acquire and maintain a supply of personal protective equipment (PPE)⁶⁷ for use by state agencies and to aid local government and the private sector. The Division must conduct regular inventories of the PPE supply, which must include projections of the need for additional PPE as necessary to maintain the supply and replace expired items. The bill requires the initial inventory to be reported to the Legislature, Governor, and the Chief Justice by December 31, 2021, and annually thereafter.

The bill requires DOH to prepare and maintain a state public health emergency management plan to serve as a comprehensive guide to public health emergency response in the state. DOH must develop the plan in collaboration with the Division, other executive agencies with functions relevant to public health emergencies, district medical examiners, and national and state public health experts. The plan must address each element of public health emergency planning and incorporate public health and epidemiology best practices to ensure the state is prepared for every foreseeable public health emergency. It must include an assessment of state and local public health infrastructure, including information systems, physical plant, commodities and human resources, and an analysis of the infrastructure necessary to achieve the level of readiness proposed by the plan for short and long term public health emergencies. The plan must be submitted to the Division by July 1, 2022. DOH must review the plan after the termination of each declared public health emergency or every five years, whichever is sooner. The public health emergency management plan must be incorporated into the state comprehensive emergency management plan.

The bill requires existing agency emergency plans to also include provisions related to pandemics and other public health emergencies consistent with the DOH emergency management plan. Such agency plans must be updated by December 31, 2022.

Upon a declaration of a public health emergency, the bill requires the State Health Officer to establish, by order, the method and procedure for identifying and reporting cases of and deaths involving the infectious disease or occurrence identified as the bases for the declared public health emergency. The method and procedure must be consistent with the standards developed by the federal government, if any, or, if no federal standard exists, consistent with public health best practices. During the

⁶⁷ The bill defines the term “personal protective equipment” as protective clothing or equipment designed to protect an individual person from injury or the spread of infection.”

emergency, DOH is responsible for the collection and official reporting and publication of cases and deaths. The bill also provides that the State Health Officer may request the assistance of district medical examiners in performing this function. The bill expressly requires medical examiners to perform this function if requested, conditioning the current law requirement to determine deaths by diseases constituting a public health threat upon the State Health Officer's request. The bill clarifies that s. 406.11, F.S., obligation to determine the cause of death under certain circumstances includes certifying the death, as well.

Emergency Orders and Delegated Authority

The bill clarifies that any such delegation of emergency powers by the Governor or Division must be limited to no more than 60 days, and may be renewed as necessary during the duration of the emergency.

The bill provides increased transparency related to emergency orders, proclamations, and rules issued during an emergency. The bill provides that any order, proclamation, or rule must be limited to 60 days and renewed only as necessary during the emergency. If renewed, the order, proclamation, or rule must state with particularity what provisions are being renewed. The bill requires each order, proclamation, or rule issued to specify the statute or rule that is being amended or waived, if applicable, and to provide the expiration date for the order, proclamation, or rule.

Any order or proclamation that closes or forces schools or businesses to operate in a restricted capacity must state the specific reasons for such action and must be reassessed regularly.

The bill increases reporting to the Legislature during emergencies. Specifically, all emergency orders must be promptly filed with the Legislature. In addition, the bill requires monthly reports to the Legislature relating to the transfer of personnel or functions of state departments during an emergency.

Beginning July 1, 2022, the bill requires all emergency declarations and orders issued by the Governor or an agency to be immediately filed with the Department of State. The Department of State 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. Failure to file an order or declaration within 3 days voids the declaration or order.

Emergency Spending, Generally

The bill allows for the Governor to make funds available during the emergency, by transferring and expending moneys appropriated for other purposes or by transferring and expending moneys from the EPR Fund. If additional funds are needed, the Governor can make funds available by transferring and expending moneys out of any unappropriated surplus funds or from the Budget Stabilization Fund if such transfers and expenditures are directly related to the declared disaster or emergency. However, notice of such action (to expend funds from unappropriated surplus funds or the Budget Stabilization Fund) must be made to the President of the Senate and Speaker of the House of Representatives at least 7 days before their effective date of the transfer. If both the Speaker of the House of Representatives and President of the Senate object, the transfer is voided.

The bill authorizes the Legislative Budget Commission to convene to transfer unappropriated surplus funds to the EPR Fund as necessary.

The bill provides that whenever a state agency or political subdivision accepts assistance in aid of for the purpose of emergency prevention, management, mitigation, preparedness, response, or recovery received under s. 252.37, F.S., the agency or political subdivision must submit to the Legislature, in advance, a detailed spending plan for the money. 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 as long as funds continue to be disbursed.

Spending and Audits during Long-term Emergencies

The bill provides for increased transparency and accountability once an emergency exceeds specified timeframes. Once an emergency exceeds 90 days, the bill requires the Governor to submit a copy of any contract executed with moneys authorized for expenditures to support the declared state of emergency to the Legislature within 72 hours of executing the contract, and within 30 days of the 90th day of the declared emergency for contracts executed during the first 90 days. In addition, once the emergency exceeds 90 days, the Governor must begin submitting monthly reports to the Legislature of all state expenditures, revenue received, and funds transferred by agency during the month to support the emergency.

Once an emergency exceeds one year, the Auditor General must conduct a financial audit of all associated expenditures and a compliance audit of all associated contracts entered into during the emergency. The audit must be updated annually until the emergency terminates. Once the emergency terminates, the Auditor General must conduct an additional audit that addresses the entire emergency.

Significant Emergency Orders

The bill defines the term “significant emergency order” as an order or ordinance issued or enacted by a political subdivision in response to an emergency pursuant to the Act or chapter 381, F.S., relating to public health emergencies, that applies to all residents within the political subdivision and limits the right of a resident to:

- Exercise religious freedom, including the right to attend a religious service;
- Speak freely or assemble;
- Work, be rewarded for industry, or enter into a contract;
- Travel;
- Acquire, possess, or protect real or personal property;
- Not be subject to unreasonable search and seizure; or
- Purchase, keep, or bear a lawful firearm or ammunition.

The bill allows for exceptions to be made for first responders, health care practitioners, and public utility employees.

The bill provides that the intent of the Legislature is to minimize the negative effects of an extended significant emergency order issued by a political subdivision. As such, the bill requires a significant emergency order issued by a political subdivision to be narrowly tailored and limited in duration, applicability, and scope to reduce any infringement on individual liberty to the greatest extent possible. In addition, the order must contain specific finds supporting the existence of such a purpose.

The bill provides that a significant emergency order automatically expires seven days after issuance and may be extended, as necessary, in seven-day increments for a total duration of 42 days.

Miscellaneous

The bill provides that the Legislature may, at any time, terminate a state of emergency or any specific order or directive thereunder, by concurrent resolution.

The bill allows for the Governor, Lieutenant Governor, Surgeon General, the Director of the Division, the President of the Senate, and the Speaker of the House of Representatives to disseminate public service announcements during a state of emergency concerning the emergency without violating provisions relating to the Gift Ban.

B. SECTION DIRECTORY:

Section 1: Amends s. 11.90, F.S., relating to the Legislative Budget Commission.

Section 2: Amends s. 252.311, F.S., providing legislative intent.

Section 3: Amends s. 252.34, F.S., providing definitions.

Section 4: Amends s. 252.35, F.S., relating to the emergency powers of the Division.

Section 5: Amends s. 252.356, F.S., relating to emergency and disaster planning provisions.

Section 6: Amends s. 252.359, F.S., relating to emergency supplies.

Section 7: Amends s. 252.36, F.S., relating to the emergency powers of the Governor.

- Section 8:** Creates s. 252.3611, F.S., relating to transparency and audits.
Section 9: Amends s. 252.365, F.S., relating to emergency coordinating officers.
Section 10: Amends s. 252.37, F.S., relating to the financing of emergencies.
Section 11: Amends s. 252.38, F.S., significant emergency orders.
Section 12: Amends s. 252.44, F.S., relating to emergency mitigation.
Section 13: Amends s. 377.703, F.S., conforming a cross-reference.
Section 14: Amends s. 381.00315, F.S., relating to DOH.
Section 15: Amends s. 406.11, F.S., relating to examinations, investigations, and autopsies.
Section 16: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact of this bill is indeterminate. Beginning July 1, 2022, the bill requires the Department of State to index all emergency declarations and orders and make them available in a searchable format on its website within 2 days of receipt. The bill specifies that such declarations and orders must be searchable by term, statute and rule, and must include a search category that specifically identifies emergency orders that are in effect at any given time. The impact is not expected to be significant.

During long-term emergencies, the bill requires the Governor to provide increased reporting to the Legislature. The costs associated with such reporting should be insignificant. The bill also requires the Auditor General to conduct specified audits for any emergency that lasts longer than one year, and for every emergency after the emergency expires. As such, there will be an indeterminate negative fiscal impact on expenditures of the Auditor General, but it is anticipated that the impact can be absorbed within existing resources.

The bill requires DOH to create a state public health emergency management plan to serve as the comprehensive guide to public health response in the state. The impact is not expected to be significant.

Lastly, the bill requires the Division to acquire and maintain an inventory of PPE and replace and maintain the inventory as necessary to ensure that the supplies are not expired. Depending on the PPE purchases, this requirement may have a significant future fiscal impact on the Division.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Division to update the rule containing the state comprehensive emergency management plan. The Division has sufficient rulemaking authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.