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 Rules

BILL:	CS/SB 254
INTRODUCER:	Rules Committee and Senators Brodeur and Perry
SUBJECT:	Religious Institutions
DATE:	January 13, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Caldwell	MS	**Favorable**
2.	Lloyd	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 254 would disallow emergency orders issued under the State Emergency Act which prohibited a religious organization from conducting regular religious services or activities. However, such emergency orders would be permitted to restrict religious activities if such a restriction was part of a general provision which applied uniformly to all entities in an affected jurisdiction and the restriction served a compelling governmental interest and was the least restrictive means of furthering that compelling governmental interest.

The effective date of the bill is July 1, 2022.

II. Present Situation:

COVID-19

Since early 2020, the COVID-19 pandemic has drastically affected the state of Florida. According to data reported by the federal Department of Health and Human Services (HHS), the federal Centers for Disease Control and Prevention (CDC), and the Florida Department of

Health, over three-and-a-half million positive COVID-19 cases have been diagnosed in the state and more than 58,000 Florida residents have died of the virus.[1,2]

As of November 5, 2021, Florida's infection rate, the number of COVID cases per 100,000, is below the national average and for its region at 51 per 100,000.[3] These numbers represent a decline over past infection rates. Florida has also recently shown a significant decrease in COVID-19 death rates and reports a death rate per 100,000 individuals (0.1) that is significantly lower than the national rate (2.3) and the regional rate (4.1).[4] At least 69 percent of Florida's population has received at least one dose of a COVID-19 vaccination including 81 percent of those over the age of 18.

Stay at Home Orders – Florida

In response to the pandemic, Governor Ron DeSantis issued Executive Order No. 20-52 on March 9, 2020, declaring a state of emergency and issuing guidelines to halt, mitigate, or reduce the spread of the outbreak.[5] More than 50 supplemental executive orders addressing specific conditions followed the initial order.[6,7] One order provided that certain essential businesses and establishments could operate at diminished capacities at various times during the public health emergency. Essential activities were defined as:

- Attending religious services conducted in churches, synagogues, and houses of worship;
- Participating in recreational activities (consistent with social distancing guidelines) such as walking, biking, hiking, fishing, hunting, running, or swimming;
- Taking care of pets; and
- Caring for or otherwise assisting a loved one or friend.[8]

The emergency order was extended seven times before ending on May 3, 2021. Executive Order No. 21-102, which was effective immediately, directed a return to normal, everyday life and prohibited local political subdivisions and local municipalities from enacting any new emergency

[1] Department of Health and Human Services, *COVID-19 Reported Patient Impact and Hospital Capacity by State Timeseries (Data set report generated on October 26, 2021), available at https://healthdata.gov/browse?tags=hhs+covid-19* (last visited October 26, 2021).
[2] Florida Department of Health, Division of Disease Control and Health Protection, *COVID-19 Weekly Situation Report: State Overview, available at* Home - Florida Department of Health COVID-19 Outbreak (floridahealthcovid19.gov) (last visited Oct. 19, 2021).
[3] The national average for the week of November 5, 2021 is 150 per 100,000 and for the state's designated HHS region, the new COVID-19 case rate per 100,000 is 84. Department of Health and Human Services, *COVI-19 Community Profile Report – Florida, available at https://healthdata.gov/Community/COVID-19-State-Profile-Report-Florida/ht94-9tjc* (last visited November 10, 2021).
[4] Department of Health and Human Services, *COVID-19 Community Profile Report – Florida, available at https://healthdata.gov/Community/COVID-19-State-Profile-Report-Florida/ht94-9tjc (last visited November 10, 2021).*
[5] A state of emergency declared under the State Emergency Management Act may not last for more than 60 days unless it is renewed by the Governor. Section 252.36(2), F.S.
[6] *See* List of 2020 Executive Orders, Executive Officer of Governor Ron DeSantis *available at https://www.flgov.com/2020-executive-orders/*(last visited on November 10, 2021).
[7] *See* List of 2021 Executive Orders, Executive Officer of Governor Ron DeSantis *available at https://www.flgov.com/2021-executive-orders/* (last visited on November 10, 2021).
[8] Governor Ron DeSantis, Executive Order 2020-91 (effective April 3, 2021), *available at https://www.flgov.com/2020-executive-orders/* (last visited on November 10, 2021).

orders or restrictions that imposed restrictions or mandates on businesses or individuals because of the COVID-19 emergency.[9]

A second Executive Order, No, 21-101, issued on May 3, 2021 and effective July 1, 2021, suspended any remaining local orders by political subdivisions related to COVID-19 which restricted the rights or liberties of individuals or businesses.[10] In issuing this Executive Order, the Governor stated that the remaining local emergency orders were "not narrowly tailored to serve a public health or safety purpose and unnecessarily restrict individual rights and liberties, including the economic and commercial rights and liberties of business owners in this State."[11]

Stay at Home Orders – National Review

On March 16, 2020, President Donald Trump and the White House Coronavirus Task Force issued recommendations to the public on how to help slow the spread of the COVID-19 virus, which built upon previously released CDC guidance. These recommendations advised the public to:

- Follow the instructions of their state and local authorities;
- Stay at home if they felt sick;
- Keep children at home if they are ill;
- Keep the entire household at home, if someone in the household tests positive for the Coronavirus;
- Stay home and away from other people if you are an older American; and
- Stay home and away from other people if you are a person with a serious underlying health condition.[12]

The guidelines further encouraged the public to work or engage in schooling from home whenever possible, to avoid social gatherings of more than 10 people, use pickup or delivery options for food pick-ups, avoid discretionary travel, and to not visit nursing homes or long-term care facilities.

During the "Stay at Home" time period, some other states and local municipalities enacted more restrictive orders and established specific requirements for unique types of gatherings, such as religious services. In March 2020, a pastor in Hillsborough County, Florida, was arrested after holding an in-person church service for hundreds of his members in violation of a local ordinance prohibiting gatherings of more than 10 persons, including at religious institutions.[13]

---

[9] Governor Ron DeSantis, Executive Order 2021-102 (effective May 3, 2021), *available at* https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-102.pdf (last visited on November 10, 2021).
[10] Governor Ron DeSantis, Executive Order 2021 – 101 (effective July 1, 2021), *available at* LG-BIZHUB-20210503024737 (flgov.com) (last visited on November 10, 2021).
[11] *See* Governor Ron DeSantis, Executive Order 2021-101 (effective July 1, 2021), *available at* https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-101.pdf (last visited November 10, 2021).
[12] The White House and Centers for Disease Control, *The President's Coronavirus Guidelines for America (March 16, 2020), available at* https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf (last visited on October 21, 2021).
[13] CNN, *Police arrest Florida pastor for holding church services despite stay-at-home order* (March 30, 2020), *available at* https://www.cnn.com/2020/03/30/us/florida-pastor-arrested-river-church/index.html (last visited on October 21, 2021).

The charges were eventually dropped and Governor DeSantis issued a modified Executive Order to include religious services as an essential service.

In May 2020, President Trump called on the nation's governors to re-open religious institutions under new guidance issued by the CDC. At the time, it was estimated that more than 90 percent of houses of worship had been closed to in-person worship.[14] Archived materials from the CDC from February 2021 for *Communities in Faith* encouraged worshippers to practice the same general hygiene and social distancing standards as in any other workplace or business location, suggested limits on the sharing of materials such as hymnals, prayer books, or other frequently touched books, provided modified methods for the collection of financial contributions to reduce contact, recommended limited physical contact, and asked worshippers to consider pre-packaged food options if meals were offered.[15]

Federal and State Law Pertaining to Religious Liberty

Provisions in the Constitutions of Florida and the United States

The relationship between religion and government in the United States is governed by the First Amendment to the United States Constitution, which prevents the government from establishing religion and protects privately initiated expression and activities from government interference and discrimination.[16] Both the U.S. Constitution and the Florida Constitution contain an Establishment Clause, Free Exercise Clause, and protect individual freedom of speech and expression.[17]

The First Amendment's Equal Protection Clause provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.

Similarly, Article I, section 3 of the Florida Constitution states:

> There shall be no law respecting the establishment of religion, or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety.

Establishment Clause

The Establishment Clause of the First Amendment to the U.S. Constitution requires the government to maintain neutrality in its treatment of religion. Quoting from its decision in *Sherbert v. Verner*, the U.S. Supreme Court notes that the "door of the Free Exercise Clause

[14] National Public Radio, *President Trump Sides with Churches Asserting a Right to Reopen (May 23, 2020),* *https://www.npr.org/sections/coronavirus-live-updates/2020/05/23/861386816/president-trump-sides-with-churches-asserting-a-right-to-reopen* (last visited on October 21, 2021).
[15] Centers for Disease Control and Prevention, *Considerations for Communities of Faith (Updated February 19, 2021), available at* *https://www.cdc.gov/coronavirus/2019-ncov/community/faith-based.html* (last visited on October 21, 2021).
[16] U.S. CONSTITUTION. Amend. I.
[17] U.S. CONSTITUTION. Amend. 1; FLA. CONSTITUTION, Art. 1, sections 3 and 4.

stands tightly closed against any governmental regulation of religious beliefs as such,"[18] and a regulation may appear to be neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion.[19]

The incorporation of the Fourteenth Amendment into the First Amendment protections extended the Congressional prohibition from making any law respecting the establishment of religion or prohibiting the free exercise of religion to also include actions by the states. The first court case appeared in 1931, *Stromberg v. California*, and additional protections were presented in *Cantwell v. Connecticut* in 1940.[20] The *Cantwell* court said:

> The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts – freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case, the power to regulate must be so exercised or not, in attaining a permissible end, unduly to infringe the protected freedom.[21]

Free Speech and Expression

However, the right to practice religious freedom is not absolute. In the United States Supreme Court case, *Reynolds v. United States,* 98 U.S. 145 (1879), a case which addressed a federal statute outlawing bigamy and some worshippers under the Church of Latter Day Saints which believed their religion mandated the practice, the Court upheld his conviction and the authority that Congress had to outlaw bigamy. The Court said, "Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and, in effect permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."[22] Additional precedent which applied protection under the Equal Protection Clause of the Fourteenth Amendment was decided in *Prince v. Massachusetts* during the October 1943 term, when the

---

[18] Quoting from *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

[19] *Wisconsin v. Yoder,* 406 U.S. 205, 220. In *Yoder,* the respondents had been convicted of violating the state's compulsory school attendance law which required all children to attend school until the age of 16. The Yoders and other respondents had withdrawn their children after the eighth grade in accordance with their Amish religious beliefs.

[20] *See Stromberg v. California,* 283 U.S. 359. In *Stromberg,* a young camp counselor was charged with violating the state penal code for displaying a red flag in a public place under one of three conditions related to government opposition or incitement of violence. After being found guilty, she appealed on the grounds that the conviction was a violation of her free speech. The majority opinion of the U.S. Supreme Court stated that free speech, including certain nonverbal expressive conduct such as waving a red flag, was protected under the First Amendment and made clear that the First Amendment applied to state actions. States could place limits on speech which incited violence or threatened the overthrow of the government.

[21] *Cantwell, et al v. Connecticut*, 310 U.S. 296, 303-304 (1940).

[22] *Reynolds v. United States,* 98 U.S.145, 166-167. (1879)

United States Supreme Court further recognized that the right to practice religion was not an unlimited privilege, however; stating, "the right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death."[23] The court stated that while "religious training and activity, whether performed by adult or child, are protected by the Fourteenth Amendment against interference by state action, except insofar as they violate reasonable regulations adopted for the protection of the public health, morals and welfare."[24]

During the issuance of *Stay at Home Orders* by state officials and local governments during the COVID-19 pandemic, churches and religious organizations challenged some of those orders which had resulted in the suspension of in-person religious services or those which limited in-person services or gatherings in general to a certain number of persons or households. These challenges alleged that such orders were unconstitutional on several grounds: The free exercise of religion, right to assembly, and the equal protection clause under the First Amendment and the Fourteenth Amendment.

In some states, social distancing standards, group sizes, or meeting limitations varied based on essential or non-essential services, the type of entity (commercial, non-commercial, religious, bar, or restaurant), or the infection levels in a given area. Concerns were raised in different court filings and orders which specifically identified what the parties believed were unique situations for religious gatherings as opposed to other gatherings such as the potential length of services and extended contact between worshippers, exposure to singing or chanting, clusters of large groups in enclosed spaces, multiple households from within and without the area in a confined indoor area, and the ability to deliver religious services through alternative means.[25] State or local governments often argued that the pandemic warranted unique actions and that such actions met a compelling governmental interest.

However, a law that burdens religious practices need not be justified by a compelling governmental interest if it is neutral and of general applicability, meaning that the provision would apply uniformly to all similarly situated entities.[26] If such laws do restrict or infringe solely upon religious practices, then the law will be subject to strict scrutiny as to whether it can be justified by a compelling state interest and is it narrowly drawn to satisfy that state interest or is there another less restrictive means available to further the government's compelling interest. One of the first applications of strict scrutiny and review for a compelling governmental interest was the U.S. Supreme Court case, *Jacobson v. Massachusetts* in 1905, which recognized that the state acting under its police powers could require individuals to be vaccinated for smallpox or face a fine. "The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community."[27]

---

[23] *Prince v. Massachusetts,* 321 U.S.158, 166-167 (1943).
[24] *Prince v. Massachusetts,* 321 U.S. 158, 172 (1943).
[25] *See South Bay United Pentecostal Church, et al v. Newsom,*592 U.S. ___(2021), *Roman Catholic Diocese of Brooklyn, New York v. Cuomo,* 592 U.S. ___ (2020), *Calvary Chapel Dayton Valley v. Sisolak,* 591 U.S. ____(2020), and *Legacy Church v. Kunkel,* 455 F.Supp. 3d 1100 (D.N.M. 2020).
[26] *Church of the Lukumi Babulu Aye, Inc. v. et al v. City of Hialeah,* 508 U.S. 520, 531 (1993), *citing Employment Div., Dept. of Human Resources of Ore. v. Smith,* 494 U.S. 872 (1990).
[27] *Jacobson v. Massachusetts,* 197 U.S. 11 (1905).

COVID-19 Legal Challenges

California, Illinois, Kentucky, Minnesota, New York, and New Mexico are examples of states which imposed restrictions on various types of gatherings during the height of the COVID-19 pandemic, including some restrictions which were unique to religious gatherings. Injunctions were filed with disparate outcomes from Spring 2020 through the Summer 2021. Several cases reached the United States Supreme Court. In California, the United States Court of Appeals for the Ninth District, initially found in favor of the Governor's COVID-19 in-person restrictions as they applied to worship services in an October 2020 ruling finding that the restrictions did not treat secular and religious activities differently; however, this ruling was then appealed to the United States Supreme Court. At that time, California was the only state to ban all indoor religious activities. Restrictions in New Mexico were also upheld in federal court in the Spring of 2020 as the court found that the state's orders did not violate the free exercise of religion because the order was neutral and generally applicable with no evidence of religious animus, was in the public's interest to achieve limits in the state's COVID-19 outbreak, and met a compelling state interest.[28] These factors had to be balanced against the public's right to gather.

In November 2020, the United State Supreme Court enjoined enforcement of executive orders in the state of New York relating to specific attendance limits at religious services based on certain areas classified as red or orange zones. The government classified these zones based on their COVID-19 infection rates. In a red zone, for example, religious services were capped at no more than 10 persons and in an orange zone, the limit was 25.[29] However, in the same red zone where a religious organization was limited to 10 individuals, a business that was identified as "essential" was permitted to admit as many persons as they wished and in an orange zone, a non-essential business could admit as many patrons as they determined was appropriate.[30] The court found that because these restrictions were not rules of general applicability, they must satisfy "strict scrutiny" and must be "narrowly tailored to serve a compelling state interest."[31] While the court admitted to not being public health experts, the opinion stated:

> Members of this Court are not public health experts, and we should respect the judgment of those with special expertise and responsibility in this area. But even in a pandemic, the Constitution cannot be put away and forgotten. The restrictions at issue here, by effectively barring many from attending religious services, strike at the very heart of the First Amendment's guarantee of religious liberty. Before allowing this to occur, we have a duty to conduct a serious examination of the need for such a drastic measure.[32]

The United States Supreme Court in *Harvest Rock, et al v. Newsom, Governor of Ca.,* remanded the case to the Ninth District Court of Appeals for further consideration in light of the court's

---

[28] *Legacy Church, Inc. v. Kathyleen M. Kunkel and the State of New Mexico,* 455 F.Supp.3d 1100(D.N.M. 2020).
[29] *Roman Catholic Diocese of Brooklyn, New York, v. Andrew M. Cuomo, Governor of New York,* 592 U.S. _____(2020) (slip op., at 3).
[30] *Roman Catholic Diocese of Brooklyn, New York, v. Andrew M. Cuomo, Governor of New York,* 592 U.S. _____(2020) (slip op., at 3).
[31] *Roman Catholic Diocese of Brooklyn, New York, v. Andrew M. Cuomo, Governor of New York,* 592 U.S. _____(2020) (slip op., at 4).
[32] *Roman Catholic Diocese of Brooklyn, New York, v. Andrew M. Cuomo, Governor of New York,* 592 U.S. _____(2020) (slip op., at 6).

ruling in *Roman Catholic Diocese of Brooklyn, New York v. Cuomo,* 592 U.S. ____ (2020). A subsequent court ruling in February 2021 under *South Bay United Pentecostal Church, et al, v. Newsom,* 592 U.S.____(2021) was also taken into consideration when the Ninth District Court of Appeals re-heard the *Harvest Rock* request for injunctive relief on remand. Speaking in *South Bay,* Justice Barrett said in her concurring statement, "The whole point of strict scrutiny is to test the government's assertions, and our precedents make plain that it has always been a demanding and rarely satisfied standard. Even in times of crisis - perhaps especially in times of crisis - we have a duty to hold governments to the Constitution."[33] By April 2021, the United States Supreme Court had noted in *Tandon v. Newsom,* that this case was the fifth time the Court had summarily rejected the California's Blueprint System and COVID-19 restrictions on religious exercises.[34]

Religious Freedom Restoration Acts

The Religious Freedom Restoration Act of 1993

In 1993, Congress passed the Religious Freedom Restoration Act (RFRA) to establish rights which exceeded those found under the free exercise of religion clause of the United States Constitution.[35] The legislation created a heightened standard of review for government actions that substantially burden an individual's right to practice his or her religion. The legislation further prohibits a substantial burden on an individual's right to practice religion even if the burden is the result of a rule of general applicability unless the rule fulfills a compelling governmental interest and it represents the least restrictive means of achieving that compelling government interest. [36] Congress acted in 1993 following the Supreme Court's decision in *Employment Division v. Smith* whereby two members of a Native American tribe were denied unemployment benefits after they were fired for using peyote, a Schedule I controlled substance, as part of a religious ceremony.[37] In upholding the denial of benefits to the two members of the Native American tribe, the Court discussed how it would not apply the balancing test of *Sherbert* to require exemptions saying that such exceptions were better handled through an individualized government assessment process and not the courts.[38]

The original federal legislation included all government action – federal, state, and local. However, the reach of RFRA was reduced following a decision in *City of Boerne v. Flores* in 1997 when the Court held that the federal statute could not reach beyond the federal government.[39] In 2000, Congress passed the *Religious Land Use and Institutionalized Persons Act of 2000* which implemented a compelling interest test for specific types of state actions on land use regulations or the development of land. Additional regulations are also extended to any state or local government who accepts federal assistance to prohibit substantial burdens on individuals who are in institutions and their exercise of religious freedom. An institution is defined as a jail, prison, correctional facilities, or institutions for the mentally ill or for juveniles awaiting trial.[40]

---

[33] *South Bay United Pentecostal Church v. Newsom,* 592 U.S.___(2021); Justice Barrett concurring opinion.
[34] *Ritesh Tandon, et al v. Gavin Newsom, Governor of California, et al,* 593 U.S. ____(2021) (slip op., at 4).
[35] *Religious Freedom Restoration Act of 1993,* Pub. L. 103-141(1993).
[36] *Religious Freedom Restoration Act of 1993,* Pub. L. 103-141, §2 (1993).
[37] *See Employment Division v. Smith,* 494 U.S. 872 (1990).
[38] *Employment Division v. Smith,* 494 U.S. 872, 883-884 (1990).
[39] *City of Bourne v. Flores,* 521.U.S. 507 (1997).
[40] *Religious Land Use and Institutionalized Persons Act of 2000,* Pub.L. 106-274, §8 (2000).

Florida Religious Freedom Restoration Act of 1998

Additionally, Florida adopted the Religious Freedom Restoration Act (FRFRA), in 1998 following the *City v. Boerne* decision, to specifically protect an individual's right to the free exercise of religion and to create a cause of action for infringement by the state on an individual's free exercise of religion similar to the one created under the federal RFRA.[41]

The FRFRA provides that, as a general matter, the government may not substantially burden a person's free exercise of religion. However, the government may substantially burden a person's exercise of religion if the government demonstrates that the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. The "Whereas clauses" of the FRFRA legislation establish through several paragraphs the legislative intent to confirm that Florida uses the compelling interest test set forward in *Sherbert v, Verner* and *Wisconsin v. Yoder* in situations where the free exercise of religion is substantially burdened.[42]

State Health Officer

In Florida, the State Health Officer[43] is exclusively responsible for declaring a "public health emergency," which includes 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.[44] 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.[45] A public health emergency may not continue longer than 60 days unless the Governor concurs in the renewal of the declaration.[46]

Upon declaration of a public health emergency, the State Health Officer is required to establish by order, the method and procedure for the identification and report of cases and deaths involving the infectious disease or other basis for the declared public health emergency. 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, treated, isolated, or quarantined.[47]

[41] Section 761.03, Florida Statutes. *See also* Chapter Law 98-412. s. 3.
[42] Chapter Law 98-412, Laws of Florida.
[43] The head of the Department of Health is the Surgeon General and the State Health Officer. Section 20.43(2), F.S.
[44] Section 381.00315, F.S.
[45] The Chief of Domestic Security is the executive director of the Department of Law Enforcement or his or her designee. Section 943.0311(1), F.S.
[46] Section 381.00315(2)(b), F.S.
[47] Section 381.00315(2)(d), F.S. This section was amended during the 2021 Special Session B to remove the power to vaccinate from the Surgeon General. *See* Chapter Law 2021-275.

State Emergency Management Act

The State Emergency Management Act, ch. 252, F.S., was enacted to be the legal framework for this state's emergency management activities, recognizing the state's vulnerability to a wide range of emergencies, including natural, technological, and manmade disasters.[48] The act creates the Division of Emergency Management (division) within the Executive Office of the Governor and grants the division with powers and duties necessary to mitigate the vulnerability of life, property, and economic prosperity due to natural and manmade disasters.[49] The responsibilities of the division include:

- Carrying out the State Emergency Management Act;
- Preparing for and efficiently responding to public health emergencies;
- Minimizing the negative effects of a pandemic or other extended state of emergencies. These negative effects include school and business closures, which can negatively impact families and the economy;
- Ensuring transparency of all aspects of emergency preparedness, response, and recovery;
- Incorporating a shelter component that includes specific regional and interregional planning provisions to ensure adequate public shelter space in every region of the state;
- Developing and maintaining a postdisaster response and recovery component for minor, major, and catastrophic levels of disaster; include a communications plan and rapid impact assessment teams and systems for acceptance of donations;
- Maintaining a comprehensive statewide program of emergency management;
- Addressing the need to coordinate state resources such as the National Guard, statewide urban search and rescue teams, mutual aid agreements, and a comprehensive communications plan; and
- Coordinating 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 entities that have a role in emergency management. [50]

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. During the 2021 Legislative Session, the act was amended to specifically address Florida's vulnerability to public health emergencies and to emergencies of an extended nature, including identifying the department's role in public health emergencies, and adding specific definitions for "personal protective equipment" and "public health emergency."[51]

III. Effect of Proposed Changes:

Section 1 creates Section 252.64, Florida Statutes, to prohibit emergency orders either directly or indirectly from restricting religious institutions from conducting religious services or activities during a state of emergency. However, an emergency order may prohibit religious institutions

[48] Section 252.311(1), F.S.
[49] Sections 252.32(1)(a) and 252.34(3), F.S.
[50] Section 252.35(1) and (2), F.S.
[51] Section 252.34 (9) and (11), F.S.

from conducting activities if there is a general provision in the emergency order which applies uniformly to all entities in a jurisdiction and such action fulfills a compelling governmental interest and it is the least restrictive means to fulfill that governmental interest.

Section 2 provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Local subdivisions and counties that may issue their own local emergency orders would be prohibited from issuing any orders which included criteria or conditions which were more restrictive or which are not consistent with the components contained in this bill.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill addresses federal and state constitutional rights to freedom of religion and speech and appears to be consistent with current provisions of federal law, state law, and court opinions interpreting the right to these freedoms under the federal and state constitutions. These laws and court opinions were addressed under the present situation section.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Religious institutions may incur an indeterminate fiscal impact if an emergency order, in its uniform application, prohibited religious services or activities. Rather than meeting in-person, such institutions may incur costs to establish alternative means of gathering to deliver religious services or activities to their members.

C. Government Sector Impact:

The fiscal impact of this bill indeterminate. The degree of possible fiscal impact will vary according to the extent of increased litigation. To the extent increased litigation against a governmental entity results from the modifications to this Act, then state and local governments will have to defend against such litigation. Litigation involves expenses, including attorneys' fees. Furthermore, any relief granted against the state may have a fiscal impact. This indeterminate amount of resulting litigation will have a fiscal impact on the courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 252.64 of the Florida Statutes.

IX. Additional Information:

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

CS by Rules on January 13, 2022:
The CS modifies the prohibition on religious activities under an emergency order to clarify that such an order may not "directly or indirectly" prohibit religious activities rather than "expressly" prohibiting such activities under an emergency order.

B. Amendments:

None.