

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1932

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee and Senator Sullivan

SUBJECT: Emergency Management

DATE: March 29, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable/CS
2.			FP	
3.				
4.				
5.				

I. Summary:

This bill aids the state in meeting its goal of eliminating the hurricane shelter deficit by increasing the number of facilities that can be used for public shelter and revising the liability for certain persons or organizations that provide shelter space.

This bill substantially amends the following sections of the Florida Statutes: 240.295, 252.38, 252.385, 252.51, and 252.855.

II. Present Situation:

Public Shelters

Florida is frequently confronted with major hurricanes impacting its citizens and visitors. Of the approximately 5.5 million people who are vulnerable to the affects of a hurricane, many will have to evacuate to public shelters. In the wake of Hurricane Andrew, the 1993 Legislature declared in s. 252.385, F.S., its intent to not have a deficit of safe shelter space in any region of the state by 1998 and thereafter. The Division of Emergency Management (division) in the Department of Community Affairs (DCA) was required to survey existing schools, community colleges, universities, and other public buildings, and prepare a list of facilities recommended to be retrofitted using state funds. The goal was to retrofit all identified facilities by 2003.

The division reports that the survey findings have not been encouraging. They report that many of the buildings listed appear to be unsuitable as public hurricane evacuation shelters, or indicate greater shelter capacities than actually exist.

Section 240.295, F.S., requires the Board of Regents (BOR) to identify campus facilities suitable for public shelters for their students, faculty, employees, and other persons. The BOR must make such identifications in consultation with local and state emergency management agencies. Campus

buildings for which a design contract has been entered into after July 1, 1994, must be constructed according to public shelter standards unless exempted by the BOR.

No distinction is made between public shelters for hurricane evacuations and other types of emergency evacuations. Standards for public protection against hurricanes are often different from the standards or requirements for protection against other types of public emergencies.

County Emergency Management Agencies

Section 252.38, F.S., establishes local governments' emergency management powers. Each county board of commissioners must appoint the director of the emergency management agency and set the annual salary of the director. Directors serve at the pleasure of the board of county commissioners, subject to their direction and control, in conformance with applicable resolutions, ordinances, and laws.

The current practice among many counties is to either: (1) appoint a county constitutional officer or an employee of a county constitutional officer such as a sheriff or sheriff's deputy, respectively, or (2) allow the county manager, county administrator, chief administrative officer, or some other intermediate county agency or officer to appoint emergency management agency directors. As such, the county board of commissioners are placing the director under the administrative supervision and control of some intermediate county agency or official in seemingly contravention to s. 252.38, F.S.

The Attorney General issued an April 8, 1976, opinion holding that the director of a county emergency management agency may not be subordinated to an intermediate county agency or official. Only the county board of commissioners are statutorily authorized to appoint and supervise the director of a county emergency management agency. Applying the fundamental rule of statutory construction that statutes should be given their plain and obvious meaning, the opinion states in part:

I construe s. [252.38(1)(b)], as plainly providing that no public official, agency, or body other than the county governing body and the Division of [Emergency Management] of the Department of Community Affairs shall have direction and control over the director of a county's disaster preparedness agency. Thus the county governing body may not place the director under the administrative supervision and control of some intermediate county agency or official. This construction appears to be consistent with the declared legislative purpose "to provide effective and orderly governmental control and coordination of emergency operations in disasters and emergencies," [252.38(1)(a)].

The opinion further states that this section operates as an exception to s. 125.73, F.S., which requires each county to appoint a county administrator as the administrative head of the county. The county administrator is responsible for the administration of all departments of the county government. The opinion reasons that this section concerns the general subject of county administration, and s. 252.38, F.S., relates particularly with administration of a county disaster preparedness agency. Thus, "the statute relating to the particular part of the general subject will operate as an exception to, or qualification of, the general terms of the more comprehensive statute to the extent of any repugnancy between the two."

Public Shelter: Liability

Section 252.51, F.S., extends a waiver of liability to public or private persons or organizations, owning property, who voluntarily and without compensation allow a local emergency management agency to use their property as an emergency shelter. An action of gross negligence, willful and wanton misconduct by such persons invalidates the liability waiver. However, DEM represents that the concern over liability is hampering governmental, private, and volunteer agencies' abilities to staff and manage public shelters. The division believes that clarified and enhanced legal protections are needed to ensure that legal impediments do not diminish Florida's ability to perform emergency functions and provide emergency services.

III. Effect of Proposed Changes:

Section 1 amends s. 240.295, F.S., to redesignate "public shelters" as "public hurricane evacuation shelters"; to require Florida's University System to make its suitable hurricane shelter space available to the general public; and to eliminate an obsolete reporting requirement.

Section 2 amends s. 252.38, F.S., to clarify that the chief administrative officer of the county may appoint the county emergency management agency director; to specify that a county constitutional officer or his or her employee may be appointed as director following notification to the division; and to delete the proposed prohibition on placing the director under the administrative supervision of an intermediate county agency or official.

Section 3 amends s. 252.385, F.S., to:

- authorize the division to survey private facilities for inclusion, with the owners' written permission, in the department's list of public hurricane evacuation shelters;
- include district school boards and community college boards in the list of educational entities responsible for coordinating and implementing the survey of shelters for the state's public education facilities;
- require all public education entities to coordinate the survey with the division;
- change the deadline to complete the retrofitting of facilities in regions with public shelter deficits from 1998 to 2003;
- change the deadline to complete the retrofitting of all appropriate facilities from 2003 to 2008;
- clarify that owners of a shelter included on the retrofit list are not required to make any of the recommended improvements;
- require public facilities suitable for use as public hurricane evacuation shelters be available at the request of the local emergency management agencies;
- require the Department of Management Services (DMS) with the responsibility of incorporating provisions for use of suitable leased space as public hurricane evacuation shelters in its lease agreements; and
- establish standards for state-leased public facilities suitable for use as public hurricane evacuation shelters.

Section 4 amends s. 252.51, F.S., to clarify and enhance legal protection for governmental, private, and volunteer emergency management workers, to define “emergency management workers,” and to maintain that such workers’ rights under the Workers’ Compensation and pension laws are not affected by these provisions.

Section 5 repeals section 252.855, F.S., which requires the Department of Environmental Protection and DCA to develop consolidated reporting forms for the Emergency Planning and Community Right-to-Know Act and storage tank programs and provide for a single annual payment fee and reporting due date required from petroleum distributors and retail outlets. Due to changes in federal reporting requirements, this provision is obsolete.

Section 6 provides an effective date of July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The State University System must assess its campus facilities for suitable public hurricane evacuation shelter use for the general public.

The district school boards and the community college boards of trustees are responsible for coordinating and implementing the survey of public schools, universities, and community colleges with the Division of Emergency Management or the local emergency management agency.

The Department of Management Services and the University and Community College Systems may have fiscal impacts to accomplish the survey and coordination functions proposed in the bill. However, these impacts are expected to be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
