

DEALING WITH EMERGENCIES: NATURAL AND MAN-MADE

**A Presentation to the
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EMERGENCIES: What Are They?

EMERGENCIES – “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.

- **Manmade** – “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.”
- **Natural** – “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”
- **Technological** – “an emergency caused by a technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident.”

(§252.34, F.S.)

EMERGENCIES: Who Decides?

- **The Governor** (§252.36, F.S.)
 - Sub-§(1)(a): "The **Governor is responsible** for meeting the dangers presented to this state and its people by emergencies. In the event of an emergency beyond local control, the Governor ... shall have the power through proper process of law to carry out the provisions of this section.
 - Sub-§(1)(b): "... [T]he **Governor may issue executive orders, proclamations, and rules** and may amend or rescind them. Such executive orders, proclamations, and rules shall have the force and effect of law.
 - Sub-§(2): "A state of emergency shall be declared by executive order or proclamation of the Governor ... The state of emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist ..., but no state of emergency may continue for longer than 60 days unless renewed by the Governor. The Legislature by concurrent resolution may terminate a state of emergency at any time. ..."
- **Board of Supervisors** (§252.38(3)(a)(5), F.S.) – "Local Emergencies"
-- 7 day max. with 7 day increments

EMERGENCIES: Powers of Special Districts

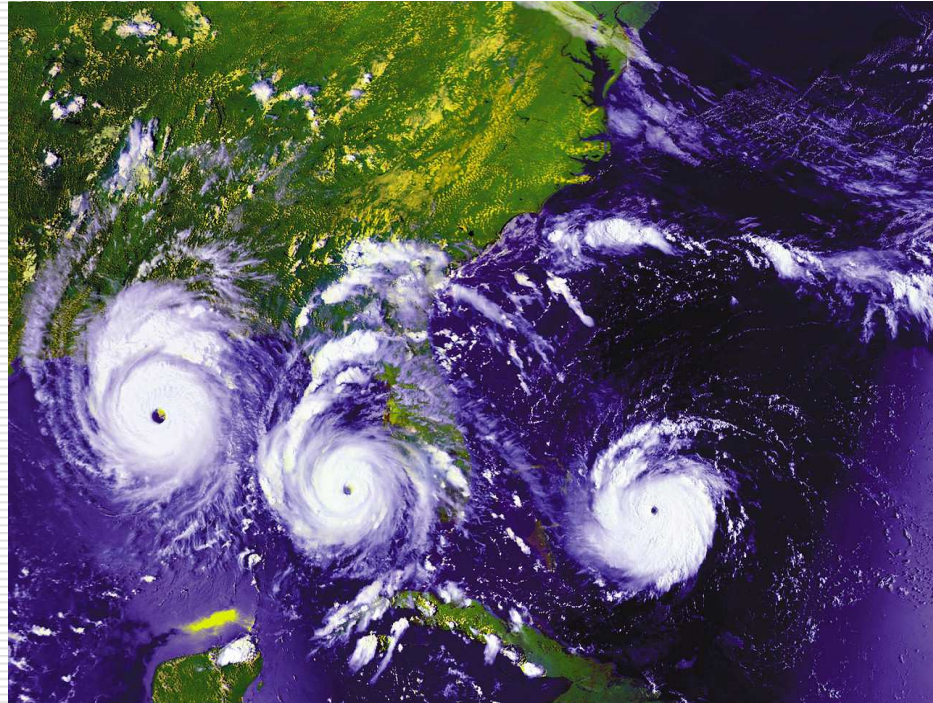
- **252.38 Emergency management powers of political subdivisions.**--Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state.
- (3)(a) EMERGENCY MANAGEMENT POWERS; POLITICAL SUBDIVISIONS.-- Each political subdivision shall have the power and authority:
 - 1. To appropriate and expend funds; make contracts; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency; and direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies.
 - 2. To **appoint, employ, remove, or provide**, with or without compensation, coordinators, rescue teams, fire and police personnel, and other **emergency management workers**.
 - 3. To establish, as necessary, a primary and one or more secondary **emergency operating centers** to provide continuity of government and direction and control of emergency operations.

EMERGENCIES: Powers of Special Districts

- 4. To **assign and make available for duty the offices and agencies of the political subdivision**, including the employees, property, or equipment thereof relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency operation purposes, as the primary emergency management forces of the political subdivision for employment within or outside the political limits of the subdivision.
- 5. To **request state assistance** or invoke emergency-related mutual-aid assistance by **declaring a state of local emergency** in the event of an emergency affecting only one political subdivision. The duration of each state of emergency declared locally is **limited to 7 days**; it may be extended, as necessary, in 7-day increments. Further, the political subdivision has the power and authority to **waive the procedures and formalities otherwise required of the political subdivision** by law pertaining to:
 - a. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.
 - b. Entering into contracts.
 - c. Incurring obligations.
 - d. Employment of permanent and temporary workers.
 - e. Utilization of volunteer workers.
 - f. Rental of equipment.
 - g. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.
 - h. Appropriation and expenditure of public funds.

NATURAL EMERGENCIES: When Mother Nature Attacks!

- WILMA**
- RITA**
- KATRINA**



NATURAL EMERGENCIES: Phases

- The calm before the storm:
 - **planning** for a natural emergency
- In the eye of the storm:
 - what to do **during** a natural emergency
- When the clouds clear:
 - **recovering** from a natural emergency

NATURAL EMERGENCIES: Planning Phase

- ❑ Anticipate emergency needs and plan ahead
- ❑ Create a District Emergency Plan
- ❑ Draft any necessary contracts, agreements, etc. (e.g., debris removal, debris sites, fuel delivery)
- ❑ Execute a Statewide Mutual Aid Agreement

NATURAL EMERGENCIES: District Policies

- District emergency plan
- Procurement and Contract Policies that provide for instances of emergencies and authorization for emergency procurement
- Debris Management Plan
- Exempt Employee Emergency Extra Compensation

NATURAL EMERGENCIES: Statewide Mutual Aid Agreement

- ❑ Florida Division of Emergency Management (FDEM):
www.FloridaDisaster.org
- ❑ Agreement between FDEM and a local government, including **Special Districts** and **Community Development Districts**
- ❑ Authorized by Emergency Management Act, Ch. 252, F.S., if emergency is too extensive for local government to handle, and to ensure timely reimbursement of costs of local governments who assist. See §§252.38, 252.40, F.S.
- ❑ Special District may request assistance for “major” or “catastrophic disaster”; also for “minor” disasters if Special District does not already have a mutual aid agreement that covers minor disasters
- ❑ In the event of a disaster or threatened disaster, Special District can request assistance from another Participating Party or from FDEM
- ❑ Assisting Party receives reimbursement from Requesting Party for cost for assisting; no reimbursement necessary if FDEM initiated the request for assistance

DURING A NATURAL EMERGENCY

- **Notice** of Emergency Meetings: Only **reasonable notice** required in the event of “bona fide emergency”
See §189.417(1), F.S.
- **Procurement** of equipment, services, commodities: Exceptions to competitive bidding requirements

DURING A NATURAL EMERGENCY: Procuring Equipment, Services, and Commodities

- **§255.0525, F.S.:** For construction projects anticipated to cost more than **\$200,000**, the district may alter bidding procedures **“in any manner that is reasonable”**
- **§287.057, F.S.:** The requirement of competitive sealed bidding for contracts for the purchase of commodities and services in excess of **\$25,000** is **WAIVED** in case of a written determination of **“immediate danger”** to public health, safety, or welfare or **“other substantial loss”**
 - **Note:** The district must obtain pricing info from at least **2 prospective vendors** and this info must be kept on file, **unless** the district makes a written determination that the time required to obtain such pricing info will increase danger
- **§255.20, F.S.:** The requirement of “competitive award” of contracts for construction or improvements to public buildings or for projects exceeding certain monetary thresholds is **WAIVED** if the project is undertaken because a facility is damaged or destroyed by **“a sudden unexpected turn of events”** that creates:
 - an **immediate danger** to public health or safety,
 - **loss to public or private property** requiring emergency government action, or
 - interruption of **essential** governmental services

AFTER A NATURAL EMERGENCY

- **Resolution** Providing for Declaration of Emergency and Authorization for Emergency Procurement Relating to Emergency Declared by Federal, State, or Local Authorities
- **Ratification** of acts taken
- Assistance from **FEMA**
- Assistance from the **Emergency Watershed Program**, if applicable

AFTER A NATURAL EMERGENCY: The Emergency Watershed Protection Program

- ❑ US Dep't of Agriculture Natural Resources Conservation Service (NRCS), Florida office:
www.fl.nrcs.usda.gov/programs/flewp.html
- ❑ Designed to respond to emergencies created by natural disasters
- ❑ Recovery work must reduce threat to life and property, and must be economically, environmentally, and socially defensible, and technically sound
- ❑ Examples: debris removal from stream channels and road culverts; reshaping and protecting eroded banks; repairing drainage facilities; purchasing floodplain easements
- ❑ Projects sponsored by legal subdivision of the State, which must provide the land rights, secure necessary permits, and accomplish installation of the work
- ❑ NRCS may fund 75% of the construction cost; 25% from local source which may be cash or in-kind services

AFTER A NATURAL EMERGENCY: FEMA

- ❑ Public Assistance Grant Program:
<http://www.fema.gov/government/grant/pa/index.shtm>
- ❑ Eligibility = “major disaster event” + designated disaster area + legal responsibility of eligible applicant
- ❑ State and local governments eligible
- ❑ Activities include debris removal, “emergency work,” restoration of damaged facilities

EMERGENCIES: Man-Made

FINANCIAL EMERGENCIES

The "Local Governmental Entity, Charter School, and District School Board Financial Emergencies Act" (§§218.50-504, F.S.)

§218.502 (Definition) "... the term "local governmental entity" means a county, municipality, or special district"

FINANCIAL EMERGENCIES: 5 Conditions (§218.503(1), F.S.)

Local governmental entities shall be subject to review and oversight by the Governor, when any one of the following conditions occurs:

1. Failure to pay **short-term loans** or to make **bond debt service** or other **long-term debt payments when due**, as a result of a lack of funds
2. Failure to pay **uncontested claims from creditors within 90 days** after the claim is presented, as a result of a lack of funds
3. Failure to transfer at the appropriate time, due to lack of funds, **taxes withheld** on the income of employees or employer and employee **contributions for Federal social security or any pension, retirement, or benefit plan** of an employee
4. Failure for **one pay period** to pay, due to lack of funds, **wages and salaries** owed to employees or **retirement benefits** owed to former employees
5. An **unreserved or total fund balance or retained earnings deficit, or unrestricted or total net assets deficit** for which sufficient resources are not available to cover the deficit

FINANCIAL EMERGENCIES: Who's Interested?

AT THE LOCAL LEVEL:

- District Administrator & CFO
- Board of Supervisors
- Independent Auditor

AT THE STATE LEVEL:

■ **THE EXECUTIVE BRANCH:**

- Governor's Office → Chief Inspector General
- Chief Financial Officer (CFO), Department of Financial Services, Bureau of Local Government
- Any State Agency → 30 days to notify Gov & JLAC

■ **THE LEGISLATIVE BRANCH:**

- Joint Legislative Audit Committee (JLAC)
- Auditor General

FINANCIAL EMERGENCIES: Who Reports?

- **Local Independent Auditor.**
 - Annual Audit Management Letter
 - Report to the District, not State
- **The District.**
 - **Voluntary Reports** to the Governor, the Chief Inspector General, or Local Independent Auditor.
 - **Annual Audit** with the “Management Letter”
 - Transmit to Auditor General (**due w/in 45 days, but no more than 12 months after FY ends**)
 - Auditor General → Chief Inspector General.
 - Executed by the “District”
 - **Annual Financial Report**
 - Transmit Certification of Financial Condition to Department of Financial Services (45 days/12 months)
 - Executed by District’s CFO & Board Chair

FINANCIAL EMERGENCIES: The “List”

□ Who Keeps the List?

- The Chief Inspector General
- Initial investigation – determine need for state aid

□ How Do You Get On the List?

- **Pre-2004** – Automatic -- Based on Annual Audit
- **Post-2004 (Ch. 2004-305)** -- Governor Decides
 - 2 added since 2004

□ Who’s On It Now?

- As of June 30, 2008, 54 of 2093 local government entities
- Of the 54:
 - 33 Special Districts (61%)/21 munis (39%)
 - 12 CDDs (22%) -- single largest SD category

FINANCIAL EMERGENCIES: How Do You Get Off the “List”

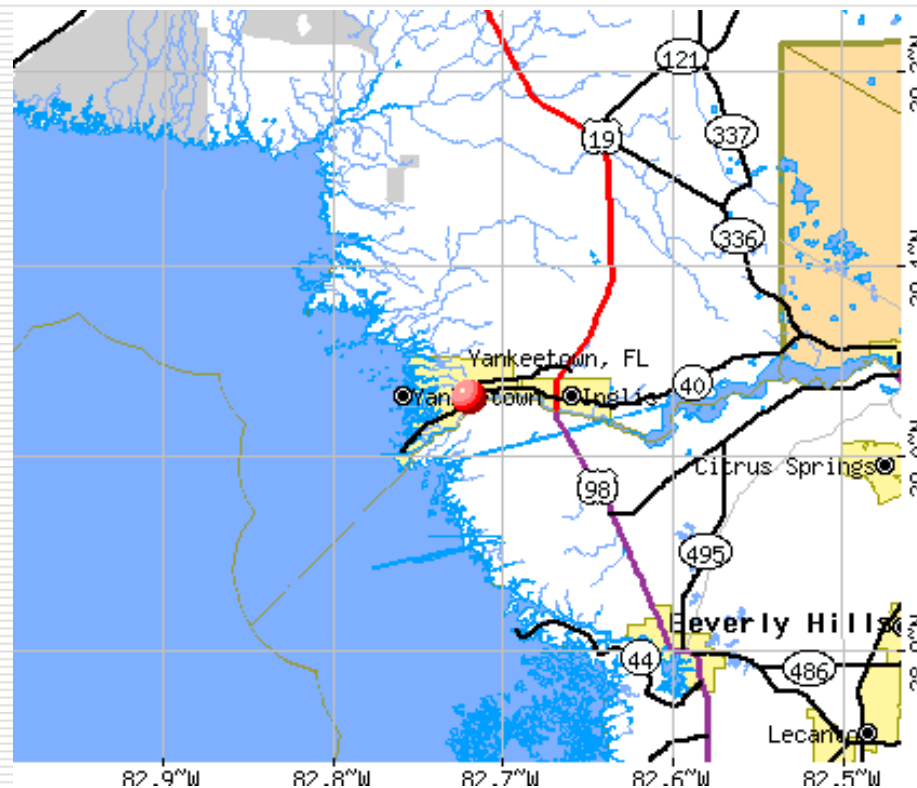
§218.504, F.S. -- Cessation of state action. Cessation of state action shall not occur until the Governor determines that the local governmental entity:

- Has established and is operating an effective financial accounting and reporting system; **AND**
 - Has resolved all of the 5 emergency conditions **AND**
 - None of the 5 emergency conditions presently exists.
- Application Form available from Chief Inspector General’s Office

FINANCIAL EMERGENCIES: Penalties

- **For Failure to Report a Financial Emergency:**
 - **No Immediate Penalty**
- **For Failure to Submit an Annual Audit to the Auditor General:**
 - Notice to Joint Legislative Audit Committee (§218.32(1)(f), F.S.)
 - **45 days** to answer Auditor General's request for information
 - "Willful failure or refusal" by an individual to comply with the Auditor General's a request to produce information is a **1st Degree Misdemeanor** (§11.47(3), F.S.) and **removal from office** (§11.47(4), F.S.).
 - A special district that persists in non-cooperation with the Auditor General may be subject to "**further state action**" (§11.40(5)(a), F.S.) (e.g., suspension of state revenue and enforcement by the Department of Community Affairs) (§189.421, F.S.)
- **For Failure to Submit an Annual Financial Statement to the Department of Financial Services:**
 - Notice to Legislative Audit Committee (§218.32(1)(f), F.S.)
 - "**Further state action**" (§11.40(5), F.S.)
- **Prohibited from filing for bankruptcy without Governor's OK**

MAN-MADE EMERGENCIES: Yankeetown--the "Nuclear Option"



MAN-MADE EMERGENCIES: Yankeetown– The Governor Intervenes

□ Executive Order 06-163:

- Financial Emergency (§218.503, F.S.)
- Manmade Emergency (§252.34(6), F.S.)

□ Actions Taken:

- Suspends §218.503, F.S., to permit access to available funds to pay bills
- Suspends §166.041(4), F.S., requiring a quorum to conduct business, except for appointments to council vacancies & zoning matters
- Appoints an Emergency Oversight Board
- Special Election for City Council

MAN-MADE EMERGENCIES: The “Quorum Problem”

The Problem: What Do You Do If You Don't Have Enough Board Members to Constitute a Quorum?

□ Why Is a Quorum Necessary?

- Term Not Defined in Florida Statutes
- Relies on Parliamentary Practice (Robert's Rules):
 - **“In the absence of a quorum, any business transacted ... is null and void. ...**
The only action that can legally be taken in the absence of a quorum is to fix the time to which to adjourn, adjourn, recess, or take measures to obtain a quorum”.

□ CDD Quorum “Lore”:

- §190.006(4), F.S.: “If, during the term of office, a vacancy occurs, **the remaining members of the board shall fill the vacancy** by an appointment for the remainder of the unexpired term.”
- §190.006(5), F.S.: “A **majority of the members of the board constitutes a quorum for the purposes of conducting its business and exercising its powers** and for all other purposes.”

□ The Governor Appoints Replacement Supervisors

- **§114.04, F.S.:** “Except as otherwise provided in the State Constitution, the Governor shall fill by appointment any vacancy in a state, district, or county office ... for the remainder of the term of an appointive officer and for the remainder of the term of an elective office, if there is less than 28 months remaining in the term.”