

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal Justice Committee

BILL: CS/SB 568

INTRODUCER: Criminal Justice Committee and Senators Baker, Posey, and others

SUBJECT: Emergency Management/Firearms

DATE: March 22, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	_____	_____	DS	_____
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill refines the authority of the Governor and local governments during a state of emergency to prohibit the seizure, taking, or confiscation of lawfully possessed firearms.

This bill substantially amends sections 252.36 and 870.044, and reenacts section 377.703(3)(a) of the Florida Statutes.

II. Present Situation:

Executive Authority

Chapter 252, F.S., governs emergency management. Section 252.32, F.S., among other things, confers certain powers upon the Governor in the event of “emergencies and disasters resulting from natural, technological, or manmade causes; in order to ensure that preparations of this 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.”

It is generally understood that during a declared state of emergency, the Governor has extensive authority to act as he or she deems necessary. Section 252.36(1), F.S., provides, in part, that “in the event of an emergency beyond local control, the Governor...may assume” or delegate “direct operational control over all or any part of the emergency management functions within this state...” In addition, the Governor may “issue executive orders, proclamations, and rules” which “shall have the force and effect of law.”

Subsection (5) specifically authorizes the Governor to, among other things, use all resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the emergency. The Governor may “suspend or limit the sale, dispensing, or

transportation of alcoholic beverages, firearms, explosives, and combustibles.” s. 252.36(5)(h), F.S.

The Governor is also directed to “take such action and give such direction to state and local law enforcement officers and agencies as may be reasonable and necessary” to secure compliance with the State Emergency Management Act and the Florida Hazardous Materials Emergency Response and Community Right-To-Know Act in ch. 252, F.S. s. 252.36(6), F.S.

A declared State of Emergency is limited to 60 days, unless renewed by the Governor or terminated by the Legislature.

Local Government Authority

Section 870.041, F.S. states: “In the event of overt acts of violence, or the imminent threat of such violence, within a county or a municipality and the Governor has not declared a state of emergency to exist, local officers shall be empowered to declare such a state of emergency exists” within the parameters of ss. 870.041 – 870.048, F.S., generally for a period of 72 hours.

Whenever a local government declares a state of emergency, the following acts are automatically prohibited:

- the sale of, or offer to sell, with or without consideration, any ammunition or gun or other firearm of any size or description;
- the intentional display, after the emergency is declared, by or in any store or shop, of any ammunition or gun or other firearm of any size or description; and
- the intentional possession in a public place of a firearm by a person, except a duly authorized law enforcement official or person in military service acting in the official performance of her or his duty.

s. 870.044, F.S.

Recent Experiences in the Aftermath of Hurricane Katrina

In the days following Hurricane Katrina making landfall, the mayor of New Orleans had the authority under Louisiana law, to declare martial law and order citizens to evacuate the city. It was reported that police officers confiscated even legally registered firearms from citizens in preparation for the mass forced evacuation. The superintendent of police declared that “only law enforcement are allowed to have weapons.” (New York Times, September 8, 2005, “New Orleans Begins Confiscating Firearms as Water Recedes.”)

III. Effect of Proposed Changes:

The bill amends ss. 252.36 and 870.044, F.S. (Executive power and Local Government power in states of emergency), to prohibit the seizure, taking, or confiscation of lawfully possessed firearms, unless a person is engaged in the commission of a criminal act. The bill also reenacts s. 377.703(3), F.S., for the purpose of incorporating a reference to s. 252.36, F.S.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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