

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: Domestic Security Committee

BILL: CS/SB 568

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

SUBJECT: Emergency Management/Firearms

DATE: March 23, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Pardue</u>	<u>Skelton</u>	<u>DS</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____
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.¹

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.”)

Firearms are Generally Prohibited in Florida’s Public Hurricane Shelters

Florida affirms the constitutional right of its citizens to keep and bear arms for hunting and sporting activities and for the defense of self, family, home, and business and as collectibles.² Florida Statutes provide for lawful ownership, possession, and lawful use of firearms by persons that includes:

- Members of the military when on duty, training or preparing for military duty, or while subject to recall or mobilization

¹S. 870.044, F.S.

²S. 790.173, F.S.

- Persons carrying out or training for emergency management duties under chapter 252
- Law enforcement personnel
- Officers or employees of the state or United States duly authorized to carry a concealed weapon
- Guards while actually employed in the shipment and transportation or delivery of any money, treasure, bullion, bonds, or other thing of value
- Regularly enrolled members of organizations: duly authorized to purchase and receive weapons; organized for target, skeet, or trap shooting, while at or going to and from shooting practice; and those organized for the purpose of modern or antique firearms collecting
- A person engaged in or traveling to or from fishing, camping, or lawful hunting
- A person engaged in the business of manufacturing, repairing, or dealing in firearms
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or while going to or from such a place
- A person firing weapons in a safe and secure indoor range for testing and target practice
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to or from a place of repair
- A person possessing arms at his or her home or place of business
- Certain classes of investigators³

Florida Statutes prohibit any person to openly carry a firearm on or about his or her person, except as otherwise provided by law.⁴

However, a person may apply for and receive a license to carry a concealed firearm under certain well defined conditions. Generally, a person must be 21 years of age or older, must undergo training demonstrating competence in firearms safety, not be a felon, have not been adjudicated an incapacitated person nor have been committed to a mental institution under chapter 394, F.S., not be a chronic or habitual user of alcoholic beverages or other substances, and not have had adjudication of guilt withheld, imposition of a suspended sentence, or been issued an injunction involving an act of domestic violence.⁵

Persons issued a concealed firearms license are prohibited from carrying such firearm into a number of places including law enforcement offices, any detention facility, any courthouse or polling place, and any elementary or secondary school, college or university, among others.⁶

The overwhelming majority of public hurricane evacuation shelters in Florida are located in elementary or secondary school, college, or university buildings. Further the American Red

³ S. 790.25, F.S.

⁴ S. 790.053, F.S.

⁵ S. 790.06, F.S.

⁶ Id.

Cross and county governments which manage the majority of public hurricane evacuation shelters prohibit possession of firearms among evacuees as a matter of policy.⁷

The only, and very unlikely, occasion where an evacuee might lawfully possess a firearm in a hurricane evacuation shelter would be the case of a person with a lawful concealed carry license seeking refuge in a shelter that is not on a school property and the shelter management grants possession permission.

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.

⁷ American Red Cross, *Red Cross Explains Dos and Don'ts of Shelters*, Oct. 18, 2005.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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