

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1301 Second Amendment to the Constitution of the United States

SPONSOR(S): Shoaf and others

TIED BILLS: **IDEN./SIM. BILLS:** SM 1630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Public Integrity & Elections Committee	11 Y, 6 N	Pardo	Rubottom
2) Judiciary Committee			

SUMMARY ANALYSIS

The Second Amendment to the United States Constitution guarantees the people the right to keep and bear arms. Similarly, the Florida Constitution guarantees the right of the people to keep and bear arms in defense of themselves.

HM 1301 expresses the will of the Legislature, on behalf of the State of Florida and its residents, to use all of its lawful authority and power to resist or overturn any federal gun-related control measure that violates the rights of Florida residents to keep and bear arms.

The memorial lays a predicate for this action by recounting the federal and state constitutional rights to bear arms as well as the federal constitutional amendment that limits the federal government's powers and recognizes each state's sovereignty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

United States Constitution

The Second Amendment of the United States Constitution provides “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.”¹

Florida Constitution

Similarly, the Florida Constitution guarantees “The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.”²

Memorial

A memorial expresses the opinion of the Legislature to the Federal Government.³ A memorial may be initiated by either the House or the Senate and must be adopted by both chambers to be effective.⁴ A memorial is not subject to veto by the Governor and upon its passage is sent directly to the specified officials.⁵

Effect of Proposed Change

The preamble in HM 1301 recognizes that both the United States Constitution and the State Constitution protect the individual right to keep and bear arms. The memorial also avers that the United States Supreme Court has decided that the Second Amendment protects an individual’s right to keep and bear arms that are “commonly used for lawful purposes.”⁶

The memorial further asserts that the President of the United States has expressed a clear intention to press Congress to pass legislation that will restrict the lawful acquisition and possession of firearms and ban many firearms that are commonly used for self-defense, hunting, competition, and target shooting. Juxtaposed against the President’s intention to restrict firearms is a statement that the United States Supreme Court has recognized in the Tenth Amendment⁷ the principles of divided sovereignty to prohibit the Federal Government from requiring the State of Florida or its officers to take part in any federal gun-control scheme.

The concluding provision of the preamble asserts that it is the duty of the State Legislature to exercise all of its lawful authority to protect the right of all state residents to keep and bear arms.

The memorial then resolves that it is the consensus of the Legislature that the President’s proposals to restrict the right of law abiding citizens to keep and bear arms is a violation of the United States Constitution. Accordingly, the Legislature intends to use all of its lawful authority and power to resist or overturn any federal gun-control measure that violates the right of residents to keep and bear arms.

¹ U.S. CONST. amend. II.

² FLA. CONST. art. 1, s. 8(a).

³ Rule 5.10, Fla. House of Representatives.

⁴ The Florida House of Representatives, Office of Bill Drafting Services, *Manual for Drafting Legislation* (2014) at 23.

⁵ *Id.*

⁶ See, *District of Columbia v. Heller*, 554 U.S. 570 (2008).

⁷ The Tenth Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The Secretary of State is directed to dispatch copies of the memorial to the President of the United States, the President of the U.S. Senate, the Speaker of the House of Representatives, and to each member of the Florida delegation in Congress.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES