

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1615 Restrictions on Firearms and Ammunition During Emergencies

**SPONSOR(S):** Gregory and Sirois

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee	12 Y, 2 N	Villa	Miller
2) Civil Justice Subcommittee			
3) State Affairs Committee			

**SUMMARY ANALYSIS**

The State Emergency Management Act (Act) empowers the Governor to declare a state of emergency. During a state of emergency, the Governor has broad power to perform necessary actions to ensure the state’s health, safety, and welfare, including issuing orders and rules having the full force and effect of law, suspending statutes and rules that hamper emergency response, and suspending or limiting the sale, dispensing, or transportation of firearms. In addition, the Act authorizes counties and municipalities to declare a state of local emergency under certain conditions and to issue orders and rules having the full force and effect of law. However, nothing in the Act may be construed to authorize the seizure, taking, or confiscation of firearms that are lawfully possessed, unless a person is engaged in the commission of a crime.

Current law also authorizes certain county and municipal officers to declare a public disorder state of local emergency in situations involving overt acts of violence (i.e., riot), or imminent threats thereof, within their jurisdictions provided the Governor has not declared a state of emergency. For counties, this authority resides with the sheriff. Municipalities have the flexibility to designate through ordinance either the mayor or chief of police to exercise this authority; however, absent such an ordinance, the chief of police automatically holds this authority.

The public disorder state of local emergency remains in effect for 72 hours unless terminated earlier by the public official issuing the order, Governor, county commission, or city council. An extension beyond the 72-hour period may be granted by the county commission or city council through a duly enacted ordinance or resolution.

Upon a declaration of a public disorder state of local emergency, the sale or intentional display in a store of ammunition or firearms is automatically prohibited. In addition, the intentional possession in a public place of a firearm by any person other than law enforcement is also automatically prohibited. A violation of the prohibition is punishable as a first-degree misdemeanor. However, the prohibition may not be construed to authorize the seizure, taking, or confiscation of firearms that are lawfully possessed, unless a person is engaged in a criminal act.

The bill repeals the statute that automatically prohibits the following acts during a public disorder state of local emergency throughout the affected jurisdiction:

- 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 any person, except a duly authorized law enforcement official or person in military service acting in the official performance of her or his duty.

The bill does not appear to have a fiscal impact on the state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### State Emergency Management Act – Powers of the Governor

The State Emergency Management Act (Act)<sup>1</sup> empowers the Governor to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies.<sup>2</sup> The Governor must declare a state of emergency upon determining the occurrence or imminent threat of an emergency. The state of emergency must continue until the Governor finds the threat or danger has been dealt with to the extent that the emergency conditions no longer exist; however, no state of emergency may continue for longer than 60 days unless renewed by the Governor.<sup>3</sup> In addition, the Legislature may terminate a state of emergency or any order, proclamation, or rule issued thereunder through a concurrent resolution.

In a state of emergency, the Governor has broad power to perform necessary actions to ensure the health, safety, and welfare of the people. This includes the power to impose curfews, order evacuations, control access to affected areas, commandeer private property subject to just compensation, and utilize all necessary state and local resources.<sup>4</sup> To effectively implement emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which have the force and effect of law.<sup>5</sup> An emergency order or proclamation must be disseminated by means calculated to bring its contents to the attention of the general public, filed with Division of Administrative Hearings, and if possible, filed with the Department of State, the Legislature, and the affected county commissioners.<sup>6</sup>

Pursuant to this emergency power, the Governor can suspend regulatory statutes or state agency rules if compliance would hamper necessary action to deal with the emergency.<sup>7</sup> In addition, the Governor has the power to suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles. However, nothing in the Act may be construed to authorize the seizure, taking, or confiscation of firearms that are lawfully possessed, unless a person is engaged in the commission of a crime.<sup>8</sup>

Any person violating any rule or order issued pursuant to the Act is guilty of a second-degree misdemeanor<sup>9,10</sup>

##### State Emergency Management Act – Powers of Political Subdivisions

Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each county and municipality of the state. Counties and municipalities have the authority to declare a state of local emergency if an emergency affects only one political subdivision. The declaration triggers the ability to request state assistance or invoke emergency-related mutual-aid assistance.<sup>11</sup> A state of local emergency may only be declared by a mayor, city manager, or board of county commissioners.<sup>12</sup>

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<sup>1</sup> Ss. 252.31-252.60, F.S., are known as the “State Emergency Management Act.”

<sup>2</sup> “Emergency” means 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. S. 252.34(4), F.S.

<sup>3</sup> S. 252.36(2), F.S.

<sup>4</sup> S. 252.36(6), F.S.

<sup>5</sup> S. 252.36(1)(b), F.S.

<sup>6</sup> S. 252.36(2) and (3)(b), F.S.

<sup>7</sup> S. 252.36(6)(a), F.S.

<sup>8</sup> S. 252.36(6)(h), F.S.

<sup>9</sup> A second-degree misdemeanor is punishable by up to a 60-day term of imprisonment or a \$500 fine. Ss. 775.082 and 775.083, F.S.

<sup>10</sup> S. 252.50, F.S.

<sup>11</sup> S. 252.38(3)(a)5., F.S.

<sup>12</sup> Florida Division of Emergency Management, *State of Florida 2022 Comprehensive Emergency Management Plan*, <https://portal.floridadisaster.org/preparedness/External/CEMP/2022%20State%20CEMP%20Base%20Plan.pdf> (last visited January 18, 2024).

The duration of a local state of emergency is seven days, but may be extended in seven-day increments as necessary.<sup>13</sup>

During a state of local emergency, counties and municipalities may waive the procedures and formalities otherwise required by law relating to:

- Performance of public work, taking necessary actions to ensure the health, safety, and welfare of the community;
- Entering into contracts;
- Incurring obligations;
- Employment of permanent and temporary workers;
- Utilization of volunteer workers;
- Rental of equipment;
- Acquisition and distribution, with or without compensation, of supplies, materials, and facilities;
- Appropriation and expenditure of public funds.<sup>14</sup>

In addition, counties and municipalities are authorized and empowered to make, amend, and rescind orders and rules as necessary for emergency management purposes that are not inconsistent with any orders or rules adopted by the Division of Emergency Management or by any state agency exercising a power delegated to it by the Governor or the division. These orders and rules must be posed only and, once filed with the clerk or recorder of the political subdivision, carry the full force and effect of law. However, any order or rule conflicting with the Act will be suspended to the extent of such conflict.<sup>15</sup>

Any person violating any rule or order issued pursuant to the Act is guilty of a second-degree misdemeanor<sup>16,17</sup>

#### Preservation of the Public Peace – Public Disorder State of Local Emergency

Current law authorizes certain county and municipal officers to declare a state of emergency in situations involving overt acts of violence, or imminent threats thereof, within their jurisdictions (public disorder state of local emergency) provided the Governor has not declared a state of emergency.<sup>18</sup> For counties, this authority is vested in the sheriff and applies to the unincorporated areas of the county. Municipalities have the flexibility to designate through ordinance either the mayor or chief of police as the official empowered to declare a public disorder state of local emergency. However, in the absence of such ordinance, the chief of police automatically holds this authority.<sup>19</sup>

The sheriff or designated city official may declare a public disorder state of local emergency in any affected part of their jurisdiction. This declaration authority is prompted by the determination of an act of violence or a flagrant and substantial defiance of a lawful exercise of public authority, giving rise to a reasonable belief in a clear and present danger of a riot and substantial injury to persons or property.<sup>20</sup> As soon as practicable following the declaration, the measure must be filed with the city or court clerk and delivered to the news media for publication and broadcast. If feasible, the declaration must be disseminated through alternative means, such as posting and the use of loudspeakers.<sup>21</sup>

The public disorder state of local emergency remains in effect for 72 hours unless terminated earlier by the public official, Governor, county commission, or city council. An extension beyond the 72-hour period may be granted by the county commission or city council through a duly enacted ordinance or resolution in regular or special session, provided there is a request from the public official.<sup>22</sup>

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<sup>13</sup> S. 252.38(3)(a)5., F.S.

<sup>14</sup> S. 252.38(3)(a)5.a.-5.h., F.S.

<sup>15</sup> S. 252.46, F.S.

<sup>16</sup> A second-degree misdemeanor is punishable by up to a 60-day term of imprisonment or a \$500 fine. Ss. 775.082 and 775.083, F.S.

<sup>17</sup> See s. 252.50, F.S.

<sup>18</sup> S. 870.041, F.S.

<sup>19</sup> S. 870.042, F.S.

<sup>20</sup> S. 870.043, F.S.

<sup>21</sup> S. 870.046, F.S.

<sup>22</sup> S. 870.047, F.S.

Upon the declaration of a public disorder state of local emergency, the public official may implement any of the following measures, in whole or in part, with such limitations and conditions as deemed necessary:

- Establish curfews, including restrictions on pedestrian and vehicular movement, except for essential and emergency services such as fire, police, utility repairs, and hospital services;
- Prohibit the sale or distribution of alcoholic beverages;
- Prohibit the possession of alcoholic beverages in public;
- Close public assemblies with designated exceptions;
- Prohibiting the sale of gasoline or other flammable or combustible liquids, except into a tank properly affixed to a motor vehicle, bike, boat, or airplane; and
- Prohibit the possession of gasoline or other flammable or combustible liquids in public.<sup>23</sup>

In addition, the following acts are automatically prohibited during a public disorder state of local emergency throughout the jurisdiction:

- 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 any person, except a duly authorized law enforcement official or person in military service acting in the official performance of her or his duty.<sup>24</sup>

However, none of the above provisions may be construed to authorize the seizure, taking, or confiscation of firearms that are lawfully possessed, unless a person is engaged in a criminal act.<sup>25</sup>

A violation of any provision within a public disorder state of local emergency declaration or a measure established pursuant thereto is punishable as a first-degree misdemeanor.<sup>26, 27</sup>

## Effect of the Bill

The bill repeals the statute that automatically prohibits the following acts during a public disorder state of local emergency throughout the affected jurisdiction:

- 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 any person, except a duly authorized law enforcement official or person in military service acting in the official performance of her or his duty.

Accordingly, such acts will not be prohibited automatically upon the declaration of a public disorder state of local emergency.

## B. SECTION DIRECTORY:

Section 1 repeals s. 870.044, F.S., relating to automatic emergency measures.

Section 2 provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

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<sup>23</sup> S. 870.045, F.S.

<sup>24</sup> S. 870.044, F.S.

<sup>25</sup> *Id.*

<sup>26</sup> A first-degree misdemeanor is punishable by up to one-year imprisonment and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>27</sup> S. 870.048, F.S.

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:**

The bill repeals a law that automatically prohibits the sale and intentional display of ammunition and firearms in a store upon the declaration of a public disorder state of local emergency. Accordingly, the bill will have a positive, yet indeterminate, fiscal impact on private businesses to the extent they are able to sell ammunition and firearms during a public disorder state of local emergency, and to the extent they will save on operating costs by no longer having to remove ammunition and firearm displays during such time.

**D. FISCAL COMMENTS:**  
None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:  
None.

**B. RULE-MAKING AUTHORITY:**

The bill neither authorizes nor requires additional executive branch rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.