

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Gregory, Sirois, and others

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	14 Y, 3 N	Mathews	Jones
3) State Affairs Committee	12 Y, 6 N	Villa	Williamson

SUMMARY ANALYSIS

The State Emergency Management Act (Act) empowers the Governor to declare a state of emergency and provides the Governor with broad power to perform necessary actions to ensure the state's health, safety, and welfare. 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 the law.

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 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 provided certain requirements are met.

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 of a firearm in a public place by any person other than law enforcement is also automatically prohibited. A violation of the prohibition is punishable as a first-degree misdemeanor. 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 s. 870.044, F.S., which 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.
- 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)¹ empowers the Governor to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies.² 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.³ 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.⁴ To effectively implement emergency measures, the Governor has the power to issue executive orders, proclamations, and rules that have the force and effect of law.⁵ An emergency order or a proclamation must be disseminated by means calculated to bring its contents to the attention of the general public, filed with the Division of Administrative Hearings, and if possible, with the Department of State, the Legislature, and the affected county commissioners.⁶

Pursuant to this emergency power, the Governor can suspend regulatory statutes or state agency rules if compliance with such would hamper necessary action to address and manage the emergency.⁷ 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.⁸

Any person violating any rule or order issued pursuant to the Act is guilty of a second-degree misdemeanor.^{9,10}

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.¹¹ A state of

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

² “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.

³ S. 252.36(2), F.S.

⁴ S. 252.36(6), F.S.

⁵ S. 252.36(1)(b), F.S.

⁶ S. 252.36(2) and (3)(b), F.S.

⁷ S. 252.36(6)(a), F.S.

⁸ S. 252.36(6)(h), F.S.

⁹ 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.

¹⁰ S. 252.50, F.S.

¹¹ S. 252.38(3)(a)5., F.S.

local emergency may only be declared by a mayor, city manager, or board of county commissioners.¹² The duration of a local state of emergency is seven days, but may be extended in seven-day increments as necessary.¹³

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

- The 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.
- The utilization of volunteer workers.
- Rental of equipment.
- The acquisition and distribution, with or without compensation, of supplies, materials, and facilities.
- The appropriation and expenditure of public funds.¹⁴

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 (division) or by any state agency exercising a power delegated to it by the Governor or the division. These orders and rules must be filed with the clerk or recorder of the political subdivision, and subsequently carry the full force and effect of the law. However, any order or rule conflicting with the Act will be suspended to the extent of such conflict.¹⁵

Any person violating any rule or order issued pursuant to the Act is guilty of a second-degree misdemeanor.^{16,17}

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 jurisdiction (“public disorder state of local emergency”) provided the Governor has not declared a state of emergency.¹⁸ 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.¹⁹

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

¹² 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).

¹³ S. 252.38(3)(a)5., F.S.

¹⁴ S. 252.38(3)(a)5.a.-5.h., F.S.

¹⁵ S. 252.46, F.S.

¹⁶ 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.

¹⁷ See s. 252.50, F.S.

¹⁸ S. 870.041, F.S.

¹⁹ S. 870.042, F.S.

²⁰ S. 870.043, F.S.

²¹ S. 870.046, F.S.

The public disorder state of local emergency remains in effect for 72 hours unless it is terminated earlier by the authorized 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 a regular or special session, provided there is a request from the public official.²²

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.
- Prohibit the possession of gasoline or other flammable or combustible liquids in public.²³

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.
- 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.²⁴

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.²⁵

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.^{26, 27}

Effect of the Bill

The bill repeals s. 870.044, F.S., which 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.
- 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 automatically be prohibited upon the declaration of a public disorder state of local emergency.

²² S. 870.047, F.S.

²³ S. 870.045, F.S.

²⁴ S. 870.044, F.S.

²⁵ *Id.*

²⁶ 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.

²⁷ S. 870.048, F.S.

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:

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.