

DISASTER RECOVERY PERSONAL PROTECTION ACT OF
2006

JULY 25, 2006.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Transportation and
Infrastructure, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5013]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 5013) to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to prohibit the confiscation of firearms during certain national emergencies, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 5013 is to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) to prohibit the confiscation of lawfully possessed firearms by an individual operating under the color of Federal law while acting in support of relief from a major disaster or emergency, unless the confiscation is otherwise permitted by law.

BACKGROUND AND NEED FOR THE LEGISLATION

In the wake Hurricane Katrina, State and local law enforcement and public safety service organizations were overwhelmed. As a result, many citizens felt threatened. Many of these citizens lawfully kept firearms for the safety of themselves, their loved ones; their businesses, and their property. Some of these firearms were con-

fiscated. H.R. 5013 prohibits the confiscation of lawfully possessed firearms by an individual operating under the color of Federal law while acting in support of relief from a major disaster or emergency, unless the confiscation is otherwise permitted by law.

SUMMARY OF THE LEGISLATION

Section 1. Short title; Table of contents

This section provides that the short title for this legislation is the Disaster Recovery Personal Protection Act of 2006.

Section 2. Findings

This section contains a number of congressional findings.

Section 3. Prohibition on confiscation of firearms during certain national emergencies

This section amends the Stafford Act to prohibit federal employees, any entities (including state and local governments) receiving federal funds, and other relief workers from confiscating, requiring the registration of, or prohibiting possession of firearms during a disaster or an emergency if those firearms are legally possessed under federal or state laws. The bill also provides for a private right of action for restitution from an individual violating this section and for the return of the firearm confiscated in violation of this section.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

On March 28, 2006, Mr. Jindal introduced H.R. 5013, the Disaster Recovery Personal Protection Act of 2006, which was referred to the Committee on Transportation and Infrastructure.

On May 17, 2006, the Full Committee met in open session and considered H.R. 5013. A manager's amendment to ensure that federal officials may seize firearms if they are possessed in violation of federal, state, or local law during a major disaster or emergency was offered by Mr. Shuster and withdrawn. A motion by Mr. Shuster to approve and favorably report to the House H.R. 5013 was agreed to by voice vote by the Full Committee, with a quorum present. There were no recorded votes taken during Committee consideration of H.R. 5013.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with ordering H.R. 5013 favorably reported House.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that H.R. 5013 contains no measure that authorizes funding, so no statement of general performance and objectives for which any measure authorizes funding is required.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 5013 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 8, 2006.

Hon. DON YOUNG,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5013, the Disaster Recovery Personal Protection Act of 2006.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford (federal costs), and Melissa Merrell (for the state and local impact).

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 5013—Disaster Recovery Personal Protection Act of 2006

H.R. 5013 would amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to prohibit federal employees, any entities (including state and local governments) that receive federal assistance, and other relief workers from confiscating, requiring the registration of, or prohibiting possession of firearms during a disaster or an emergency if those firearms are legally possessed under current federal or state laws. CBO estimates that implementing H.R. 5013 would have no significant impact on the federal budget. Enacting H.R. 5013 would not affect direct spending or revenues.

H.R. 5013 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt, during a major disaster or an emergency, some local gun-con-

trol ordinances that are more strict than state or federal law. Individuals would be able to possess firearms that are legal under state and federal law even though such possession would otherwise be prohibited under local ordinances. CBO estimates that local governments would incur no direct cost as a result of that preemption; therefore, the annual threshold established in UMRA would not be exceeded (\$64 million in 2006, adjusted annually for inflation). The bill contains no private-sector mandates as defined in UMRA.

This bill also would impose new restrictions on state and local governments that receive federal assistance. It would prohibit those governments from confiscating firearms, requiring registration of firearms, or in any way regulating the possession of firearms during a major disaster or an emergency if those firearms are legally possessed under state or federal law. This prohibition would prevent state and local governments from issuing emergency regulations, such as banning firearms in shelters or evacuation vehicles, unless there is an explicit state law prohibiting such possession.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Melissa Merrell (for the state and local impact). This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104-4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local or tribal law. H.R. 5013 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt, during a major disaster or an emergency, some local gun-control ordinances that are more strict than state or federal law. Individuals would be able to possess firearms that are legal under state and federal law even though such possession would otherwise be prohibited under local ordinances. The Congressional Budget Office estimates that local governments would incur no direct cost as a result of that preemption; therefore, the annual threshold established in UMRA would

not be exceeded. The bill contains no private-sector mandates as defined in UMRA.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee find that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT

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TITLE VII—MISCELLANEOUS

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SEC. 706. FIREARMS POLICIES.

(a) *PROHIBITION ON CONFISCATION OF FIREARMS.*—No officer or employee of the United States (including any member of the uniformed services), or person operating pursuant to or under color of Federal law, or receiving Federal funds, or under control of any Federal official, or providing services to such an officer, employee, or other person, while acting in support of relief from a major disaster or emergency, may—

(1) temporarily or permanently seize, or authorize seizure of, any firearm the possession of which is not prohibited under Federal or State law, other than for forfeiture in compliance with Federal law or as evidence in a criminal investigation;

(2) require registration of any firearm for which registration is not required by Federal or State law;

(3) prohibit possession of any firearm, or promulgate any rule, regulation, or order prohibiting possession of any firearm, in any place or by any person where such possession is not otherwise prohibited by Federal or State law; or

(4) prohibit the carrying of firearms by any person otherwise authorized to carry firearms under Federal or State law, solely because such person is operating under the direction, control, or supervision of a Federal agency in support of relief from a major disaster or emergency.

(b) *PRIVATE RIGHTS OF ACTION.*—

(1) *IN GENERAL.*—Any individual aggrieved by a violation of this section may seek relief in an action at law, suit in equity, or other proper proceeding for redress against any person who

subjects such individual, or causes such individual to be subjected, to the deprivation of any of the rights, privileges, or immunities secured by this section.

(2) REMEDIES.—In addition to any existing remedy in law or equity, under any law, an individual aggrieved by the seizure or confiscation of a firearm in violation of this section may bring an action for return of such firearm in the United States district court in the district in which that individual resides or in which such firearm may be found.

(3) ATTORNEY FEES.—In any action or proceeding to enforce this section, the court shall award the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

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ADDITIONAL VIEWS

The Committee on Transportation and Infrastructure has a strong tradition of bipartisanship and it is not often that the Minority feels compelled to file separate views to the Committee's report on a bill. However, because of the seriousness of the issue and the potential that this bill, as currently drafted, will jeopardize safety of federal and state emergency responders, we feel compelled to do so in this instance.

H.R. 5013 was scheduled for markup at the Full Committee without the benefit of any hearings on the bill or a markup by the Subcommittee on Economic Development, Public Buildings, and Emergency Management. As a result, there has been no real debate on the bill and no opportunity for Members to determine the true intent of the bill and discuss possible unintended consequences of its language.

The issue of which powers police and federal law enforcement will have to disarm citizens in a disaster is far-reaching and deserves more thoughtful consideration by this Committee. In serious emergencies there will be instances in which the officials in charge must make difficult decisions, such as allocating limited supplies of food and water, or medical services, and keeping evacuations orderly. Some of these decisions may displease citizens, and if these citizens are armed, an explosive confrontation could result.

We recognize the need for law-abiding citizens to be able to protect themselves against criminals breaking into their homes, particularly when law enforcement is unable to protect its citizens after a catastrophic disaster. And although we are told that this is the intent of the bill, the actual language of the bill appears to go much further and, as currently drafted, would seemingly prohibit federal or state officials from asking a person to surrender his or her firearm in the event of a natural disaster or terrorist attack even when public safety would require such action.

For example, under the bill as reported, a Coast Guard officer would be prohibited from requiring persons boarding a Coast Guard rescue helicopter or boat to surrender their firearms before they board. Although the Coast Guard's Air Operations Manual specifically bans passengers from carrying weapons on helicopters or vessels, federal *laws* do not include this specific prohibition.

If a Coast Guard officer required passengers to surrender weapons as required by the Coast Guard's Air Operations Manual (chapter 4, section R.4), that officer will violate section 3 of the bill ("sec. 706(a)(1)") because he is temporarily seizing a "firearm the possession of which is not prohibited under Federal or State law". The officer also will likely violate the subsection of section 3 ("sec. 706(a)(3)") that prohibits an officer from "prohibiting possession of any firearm, in any place or by any person where such possession is not otherwise prohibited by Federal or State law".

If the Coast Guard officer did in fact insist that a person surrender his weapon before boarding a rescue helicopter or boat, subsection 3 (“sec. 706(b)”) of the bill would give the rescued individual the right to sue that Coast Guard officer. Subsection 3 creates a private right of action against any person who, whether knowingly or mistakenly, violates the bill. That officer, who is serving his country and may be risking his own life to save the life of another, could be sued for his actions. Under the bill, he would be *personally* liable for damages and attorneys’ fees. He could lose his savings and could put the financial welfare of his family in jeopardy simply for doing his job. We do not believe that federal or state officials should have to take that chance.

The Coast Guard officer is therefore faced with violating this Act or the Coast Guard’s Air Operations Manual—let alone common sense. In its review of the bill, the Coast Guard stated in an e-mail: “From a CG [Coast Guard] perspective, this proposal may undermine the authority of Captains of the Ports to control the carriage of articles, including firearms, aboard waterfront facilities, vessels, and security zones when deemed necessary for security.” An additional Coast Guard e-mail summarized the Coast Guard’s view of the bill: “As written, the Coast Guard would have serious concerns for both aircraft and vessel crewmember safety.”

This Committee has jurisdiction over the Coast Guard and has consistently fought to secure its best interests. In fact, this is the first time that we can recall the Committee favorably reporting legislation that threatened the safety and security of Coast Guard personnel. It is regrettable that we have reached that point.

As a further example, in the event of terrorist attack, the bill would prohibit a police or military officer from ordering all persons in the area of the attack to surrender their guns. In that case, the officer may not have the time to determine who is in lawful possession of the weapon, but for the safety and security of the public, may simply issue a general directive for everyone to surrender their weapons. This bill would prohibit the officer from doing that. If the officer did mistakenly disarm someone who was in legal possession of a firearm, the officer could then be sued and be held personally liable for damages—even if the officer later returned that person’s weapon.

In addition, the bill provides that no person may prohibit the possession of any firearm in any place or by any person where such possession is not otherwise prohibited by Federal, State or local law. The bill appears intended to prohibit authorities, in the event of a national emergency, from requiring that people do not bring their weapons into a shelter. Given the chaos that ensued in Katrina, does anyone believe that the situation at the Superdome would have improved if the evacuees were armed? Does anyone really believe that a Catholic charity running a shelter should be prohibited from ordering that rival gang members can not bring guns into the church?

These examples are not idle speculation. Section 2 of the bill contains a finding that appears to be directed at just such circumstances. Paragraph 9 of that section addresses the issue of people being prohibited from bringing guns into emergency shelters after Hurricane Katrina. The bill concludes that these people “were

treated as second-class citizens who had forfeited their constitutional right to keep and bear arms.” We believe that there are often legitimate safety and security concerns—both for those persons staffing the shelter and for those persons taking refuge in the shelter—for prohibiting firearms in an emergency shelter. A federal law that would preempt state and local law on community security issues across the board is at best misplaced and at worst reckless.

Further, the bill provides that the *individual*—the FEMA worker, the local sheriff, the Catholic Charity volunteer, and the Coast Guard officer—are all personally liable if they mistakenly interpret these ambiguous statutory authorities. They can be sued and be required to pay damages and attorneys’ fees. We ask enough of the Coast Guard, law enforcement, and volunteers during such disasters—we shouldn’t ask them to be lawyers too.

If the Committee had followed regular order and held hearings on this bill prior to proceeding with a Full Committee markup, we believe that many of these issues could have been resolved with a bipartisan manager’s amendment, as is the tradition in this Committee. There is a way to strike the proper balance: to ensure that people can protect themselves in a time of emergency, but not give criminals free reign to terrorize the law-abiding public. We would like to work with the majority to craft language that would strike this balance, and that would not, as we believe the bill currently does, threaten the safety and well-being of charitable volunteers and federal and state officials. We appreciate the commitment that Chairman Young and Subcommittee Chairman Shuster made at the Committee markup to work together to make any necessary changes to the bill before we move forward. By working together we can take a more thoughtful approach to this important issue—an approach that better balances the legitimate rights of citizens to protect themselves with the needs of the Coast Guard and other federal, state, and local officials to ensure the safety and security of themselves and our citizens.

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