

# 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.)

BILL: CS/CS/CS/SB 1156

SPONSOR: Appropriations Committee, Criminal Justice Committee, Judiciary Committee, Senators Peaden and Posey

SUBJECT: Sport Shooting & Training Range Environment Liability Protection

DATE: March 18, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/1 amendment</u>
3.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
4.	<u>Kiger</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav/5 amendments</u>
5.	<u>Herring</u>	<u>Coburn</u>	<u>AP</u>	<u>Fav/CS</u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

## I. Summary:

CS/CS/CS/SB 1156 amends the law governing weapons and firearms to:

- Provide immunity from lawsuits by state and local governments for all shooting and training ranges (“ranges”) that have made a good faith effort to implement appropriate environmental management practices and to implement minimum risk-based corrective action principles when necessary.
- List legislative findings in support of the immunity from state claims for sport shooting and training ranges.
- Require all pending administrative or judicial claims subject to this bill to be withdrawn from the tribunal within 90 days after the bill becomes law; provides for potential damages against governmental entities.
- Create a first degree misdemeanor offense if any official, employee, or other agent of a public entity willfully and knowingly brings a claim for the placement or accumulation of projectiles against any owner, operator, or user of a sport shooting and training range in violation of the provisions of the bill.
- Create duties of the Department of Environmental Protection with regard to notifying ranges of best management practices, providing technical assistance and responding to complaints of contamination.
- Preempt the regulation of firearm and ammunition use at sport shooting and training ranges.

This bill creates the following section of the Florida Statutes: 790.333.

## II. Present Situation:

Chapter 790, F.S., governs the use, possession, and sale of weapons and firearms. The law includes the public policy that it is necessary “to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting the lawful use in defense of life, home and property . . . including the right to use and own firearms for target practice and marksmanship on target practice ranges or other lawful places.”<sup>1</sup> Since 1987, state law has pre-empted local regulation of firearms, ammunition, and components.<sup>2</sup> In 2001, the Legislature specifically prohibited state or local governmental and private suits premised solely on the lawful manufacture, distribution, or sale of firearms.<sup>3</sup>

Shooting ranges provide a wide array of recreational and training services and products for private, commercial, law enforcement, and military persons. The actual number of sport shooting ranges in the state is unknown. In 2002, the Florida Department of Environmental Protection (DEP) catalogued the addresses of 239 private and public sport shooting ranges<sup>4</sup> based on a project with limited funding to promote best management practices.<sup>5</sup>

No statewide regulation of shooting ranges exists although they are subject to local government and federal environmental regulatory standards.<sup>6</sup> No formal accreditation association exists in Florida for shooting ranges although efforts are underway to establish an association. The National Rifle Association often provides assistance to shooting ranges regarding gun safety and appropriate shooting range standards which are updated periodically to reflect changes in technology and law. However, shooting ranges are not obligated to comply with them.

Due to the growth in shooting range activities, expansion in facility capacity, the shift in population from urban to suburban and rural areas, and the impact of certain zoning decisions, issues such as noise, operational hours, public safety, environmental impact, and health concerns have become the subject of local government ordinances, civil complaints by surrounding property owners, administrative actions, and lawsuits. In 2001, the Florida Legislature provided limited immunity to sport shooting ranges from criminal prosecution or civil suits based on an underlying charge or claim of noise or noise pollution as long as the sport shooting range was in compliance with local noise-control ordinances in effect at the time of construction or initial operation of the range.<sup>7</sup> Otherwise, owners and operators of sport shooting and training ranges are subject to enforcement and lawsuits as other business owners and operators.

The DEP is the environmental regulatory agency for the state of Florida and is charged with enforcing provisions in chapters 376 and 403, F.S. Additionally, the DEP is delegated authority by the federal government to enforce a variety of environmental laws, including the state hazardous waste management program in lieu of the federal program under the Resource

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<sup>1</sup> See s.790.25, F.S.

<sup>2</sup> See s. 790.33, F.S.; chapters 88-183 and 87-23, L.O.F.

<sup>3</sup> See s. 790.331, F.S.; ch. 2001-38, L.O.F.

<sup>4</sup> The proposed CS includes a statement of legislative finding that there are over 400 shooting ranges in the state.

<sup>5</sup> Ranges typically fall into a number of categories including those owned or operated directly or for the purpose of law enforcement, military training, colleges, and vocational schools.

<sup>6</sup> See e.g., the National Firearms Act (1934), Gun Control Act (1968), Firearms Owner’s Protection Act (1986), Brady Handgun Violence Prevention Act (1993), and the 1994 Omnibus Crime Control Act.

<sup>7</sup> See s. 823.16, F.S.

Conservation and Recovery Act of 1976 (RCRA).<sup>8</sup> Florida has adopted a federally approved state plan for waste management. The RCRA gave the Environmental Protection Agency the authority to control hazardous waste including the generation, transportation, treatment, storage, and disposal of hazardous waste. In turn, states could seek approval from the EPA to administer and enforce a state hazardous waste regulatory program in lieu of the federal program so long as the state program is equivalent to the federal program. Commensurate federal assistance is provided. The state or political subdivision can impose requirements more stringent but not less stringent than the federal requirements.

According to DEP, “ranges can, if not properly managed, pose a threat to public health and the environment due to contamination of soil, ground water and surface water bodies from the discharge of lead and arsenic contained in the ammunition.”<sup>9</sup> Mitigation efforts or efforts to eliminate build-up from contaminants such as lead or arsenic from projectiles exist but ranges are not required under law to implement these efforts. Research literature and studies by the Centers for Disease Control and Prevention, the U.S. Department of Health and Human Services, and others document the history of the toxic effects for human and animal life and the environmental threats posed by significant concentrations of or exposure to lead and arsenic.<sup>10</sup> DEP provided examples of the deposit amounts that can accumulate over time<sup>11</sup>: 1) The Geneva Center Range associated with the Seminole Community College contracted for annual lead reclamation beginning in December 2000. A lead reclamation contractor removed 15,480 pounds in 2000, 12,800 pounds in 2001, and 8,580 pounds in 2002; 2) In a recent range upgrade, approximately 60 tons of lead had accumulated over a ten-year period and were removed from the Pat Thomas Law Enforcement Academy; and 3) Approximately 6,060 pounds of bullets were recovered between August 2002 and May 2003, at the Escambia River Muzzle Loaders, Inc.

In 2001, the department initiated a project to address environmental issues surrounding shooting ranges. Through a series of project workshops, DEP staff and industry stakeholders focused on pollution prevention, range best management practices, control (remediation) measures, and university research regarding lead stabilization. Some of the initiatives instituted or completed during the two-year project included the publication of a best management practices manual, the development of a database of public and private sector ranges, funding for lead stabilization studies, the establishment of environmental stewardship plans, and facilitation of improvements at law enforcement shooting ranges in coordination with the Pat Thomas Law Enforcement Academy.

### III. Effect of Proposed Changes:

**Section 1** of the bill creates s. 790.33, F.S., to grant all sport shooting ranges and persons associated with those ranges immunity from legal actions by the state, its agencies, special

<sup>8</sup> See 42 U.S.C. ss. 6901 et seq. as amended.

<sup>9</sup> See Letter to Rep. Kottkamp, dated December 8, 2003, containing cite references to environmental data from ranges regarding lead and arsenic contamination of soils and consequential off-site surface and ground water contamination including two reports entitled ‘*Environmental Impacts of Lead Pellets at Shooting Ranges and Arsenical Herbicides at Golf Courses in Florida*’, Lena Q. Ma, et al. Report 00-03, June 2000 and May 2002

at<<[http://www.floridacenter.org/publications/ma\\_00-03.pdf](http://www.floridacenter.org/publications/ma_00-03.pdf)>> and <<[http://www.floridacenter.org/publications/ma\\_0201\\_shooting\\_ranges.pdf](http://www.floridacenter.org/publications/ma_0201_shooting_ranges.pdf)>>, respectively.

<sup>10</sup> For example, lead is banned or reduced in a number of products due to concerns with its environmental safety.

<sup>11</sup> Information excerpted from documents provided by DEP.

purpose districts, or political subdivisions. Sport shooting and training ranges are defined broadly to mean any area that has been designed or operated primarily for the use of firearms, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, BB guns, airguns, or similar devices, or for any other type of sport or training shooting.<sup>12</sup>

The bill states that the Legislature intends:

- To protect range owners and various affiliated persons from legal actions by state and local governments.
- To promote "maximum flexibility to implement environmental management practices and risk-based corrective action."
- To limit legal action by the Department of Environmental Protection against ranges as a last resort after all other reasonable resolution efforts have failed.

Specifically, the bill provides immunity from legal action for any sport shooting and training range, including an owner, operator, employee, agent, contractor, customer, lender, insurer, or user, by the state, its agencies, special districts, or political subdivisions which is "associated with the use, release, placement, deposition, or accumulation of any projectile in the environment on or under that sport shooting or training range or any other property over which the range has an easement, leasehold, or legal right of use, if the sport shooting or training range owner or operator has made a good faith effort" to implement appropriate environmental management practices.

The term "environment" is defined so that the immunity would apply to any projectile that would affect the "air, water, surface water, sediment, soil, groundwater, and other natural and manmade resources of the state" of the sport shooting range or property over which the range has a legal right of use.

The term "environmental management practices" is defined to include controlling and containing of projectiles, preventing projectile components from migrating into soil and surface water, removing and recycling projectiles, and documenting the practices used.

The bill states that nothing in it is intended to "impair or diminish" the private property rights of persons who own property adjacent to shooting ranges.

Any claim that was brought by the state, its agencies, special districts, or political subdivisions, pending before a judicial or administrative tribunal as of January 1, 2004, against a sport shooting or training range, must be withdrawn within 90 days after the bill becomes law. The bill gives defendant in such cases a civil cause of action for damages, reasonable attorney's fees and costs.

The bill provides that for any action filed in violation of the act after it is effective the defendant shall recover expenses from the governmental entity bringing the action. Additionally, any

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<sup>12</sup> Section 823.16, F.S., (relating to immunity from nuisance or noise pollution suits) defines sport shooting range or range "as an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport shooting."

official, employee, or other agent of a public entity who, while acting within the scope of his or her employment, willfully and knowingly brings, or is a party to bringing an action under this created section, commits a first degree misdemeanor felony. The term "action" is not defined but presumably encompasses administrative, criminal, or civil action.

The bill requires that the Department of Environmental Protection must use its best effort to provide copies of the Best Management Practices for Environmental Stewardship of Florida Shooting Ranges to every owner and operator of a sport shooting or training range in Florida by January 1, 2005. The department is further obligated, at the request of sport shooting or training ranges, to provide technical assistance in the form of workshops, demonstrations, or other guidance.

By January 1, 2006, sport shooting and training ranges must implement environmental management practices that are appropriate to their situation.

If contamination at a range is suspected or identified by a third party or through sampling on adjacent property, the department may enter the range to investigate potential contamination. The department must give 60 days prior notice to the range. If contamination is identified by the department, principles of risk-based corrective action pursuant to existing law must be applied. The range will be primarily responsible for such principles. The department may assist in the range's efforts.

Corrective action plans must assume the range is an industrial, not a residential use, and that it will continue to be used as it presently is.

With regard to the identification of ranges within the state, the Legislative Findings in the bill state that there are "more than 400." As previously noted in the Present Situation section of this analysis, the department documented the addresses of only 239 private and public ranges in 2002.

The bill states that the protections provided for shooting ranges are "supplemental" to any other protections provided in law.

The following legislative findings are listed as a basis for granting the limited immunity:

- Over 400 public and private ranges exist in the state.
- Citizens use and enjoy ranges.
- Ranges are a necessary component of the guarantee of the right to bear arms under the Florida Constitution and U.S. Constitution.
- Ranges are used in training, practice, and qualification by law enforcement; in teaching safe use and handling of firearms to those seeking hunting licenses or licenses to carry concealed firearms; by collegiate and Olympic shooting teams; and by ROTC programs.
- Projectiles are integral to range operations.
- Whether projectiles degrade the environment is site specific.
- A set of best management practices for shooting ranges has been developed by the department, the shooting ranges, and others.

- Management practices, which are continually evolving, can minimize or eliminate the environmental impact of projectiles.
- Unnecessary litigation and regulation by government impairs the ability of citizens to use sport shooting and training ranges.
- The cost of defending unnecessary government litigation threatens the future of sport shooting and training ranges.
- Elimination of ranges would unnecessarily impair citizens' constitutional right to keep and bear arms.

The Legislature also finds that the Department of Environmental Protection does not have, and has never had, authority to apply the permitting requirements of Part IV of Chapter 403, Florida Statutes, related to resource recovery and management, to the owners and operators of sport shooting and training ranges.

The bill states that the Legislature preempts the entire field of regulating firearm and ammunition use at sport shooting and training ranges, including the environmental effects of projectile deposition.

The bill specifically provides that it supercedes any provisions contained in Chapter 376, Florida Statutes, related to pollutant discharge prevention and removal, and in Chapter 403, Florida Statutes, related to environmental control, including pollution control, electrical power plant and transmission line siting, interstate environmental control compact, resource recovery and management, environmental regulation, water supply, water treatment plants, natural gas transmission pipeline siting, and expedited permitting.

The bill also provides that the law must be liberally construed to give effect to its remedial and deterrent purposes.

**Section 2** of the bill provides that the act is effective upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

***Right to Bear Arms:*** The bill includes statements of legislative findings that say that *ranges are a necessary component to the exercise of the right to bear arms* under the

Florida Constitution and U.S. Constitution. *There is no case law construing these statements.* Although the right to bear arms is protected under the U.S. Constitution and the Florida Constitution<sup>13</sup>, it is not an absolute right for which the Florida Supreme Court has held that the right may be legislatively constrained to promote the health, morals, safety and general welfare of the people. *See Rinzler v. Carson*, 262 So.2d 661 (Fla. 1972). Moreover, despite the U.S. Supreme Court's ruling in *U.S. v. Miller*, 307 U.S. 174, 178 (1939) which held that the purpose of the Second Amendment was to assure the continuation and render possible the effectiveness of a state militia, the right to bear arms is still the subject of continuing debate and conflicting lower court rulings as to whether the constitutional provisions were intended to recognize a broad, individual right to keep and bear arms or a collective right to bear arms as it relates to the maintenance of a militia.

***Natural resources and scenic beauty:*** In 1998, voters enacted s. 7 of Article II of the *Florida Constitution* to include the stated public policy to “conserve and protect the natural resources and scenic beauty” and to provide adequately in state law “for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.” Although the constitutional provisions are not self-executing, a number of state laws and agency regulations implement this provision and may be enforced by the Department of Environmental Protection, Department of Health, and other state agencies depending on the underlying state law or administrative regulation. An attempt by a local, special district or state official, employee, or agent to enforce any such law may subject him or her to a first degree misdemeanor charge if the civil, criminal, or administrative claim were to be filed against a shooting range and the claim were construed as being in violation of the Act. Moreover, the official, agent or employee is also subject to damages, attorney's fees, and costs if the person is injured due to the claim.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

All owners, operators and other associates of sport shooting and training ranges immune to legal actions by the state, its agencies, special purpose districts, and political subdivisions may reduce the costs of doing business. Those ranges for which compliance with environmental laws, including reclamation measures to clean up contamination and pollution, is cost-prohibitive may otherwise avert bankruptcy or closure, if they comply

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<sup>13</sup> The Second Amendment of the *U.S. Constitution* (1791) provides that “[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.” Florida has a similar constitutional provision which states that “[t]he 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.” *See* s. 8, Art. I, *Fla. Const.*

with the environmental management practices and minimum risk-based corrective action principles required in the bill.

The immunity from lawsuits by the state, its agencies, special purpose districts, and political subdivisions, for range owners and operators may negatively impact individuals and property owners, including agricultural landowners who have environmental, health or economic injuries resulting from lead or arsenic from projectiles placed or accumulating in the air, water, or soil of their property. Although this bill does not prohibit an action by a private party, it may make such a suit more difficult due to the absence of an underlying state action.

C. **Government Sector Impact:**

Other than administrative or civil actions taken by DEP, it is unknown how many civil suits or criminal charges are currently pending against private sport shooting ranges arising from claims of contaminants from the projectiles or the projectiles themselves from these facilities. The DEP reports it has one environmental regulatory case pending in circuit court against the Skyway Trap & Skeet Club located in St. Petersburg, Florida. To date, DEP has identified 26 other ranges with contaminant levels in excess of state standards which have either completed clean-up or are in various stages of clean-up. These ranges were prompted to initiate clean-up either through the voluntary action of the site owner, through administrative complaints or regulatory inspections, or through permit processes and coordination with the federal Department of Defense.<sup>14</sup> DEP does not know if or how many local governments or special districts may be seeking environmental regulatory enforcement or litigation against a range.

Under the bill, any viable claim associated with the placement or accumulation of lead or arsenic from shooting range projectiles would have to be pursued under federal law. It is unknown how this bill may affect state and local entities who are authorized or delegated authority by federal law to enforce federal environmental laws through the establishment of similar state programs in conjunction with federal programs or through collaborative efforts with federal agencies such as the Environmental Protection Agency, the Forest Service or Fish & Wildlife Service of the Department of the Interior, or the Department of Defense. It is also unknown how this bill may affect any federal funding or state matching dollars contingent upon state or local enforcement of environmental laws or the establishment and enforcement of state environmental regulatory programs.

The preemption of the entire field of regulating firearm and ammunition use at sport shooting and training ranges, including the environmental effects of projectile deposition, by the state could affect the approval of Florida's hazardous waste program under the federal Resource Conservation and Recovery Act of 1976 (relating to hazard and solid waste management).

***Sovereign Immunity and Course and Scope of Employment:*** Article X, s. 13 of the State Constitution, provides that sovereign immunity may be waived through an enactment of

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<sup>14</sup> See 12/22/03 DEP draft chart entitled: "Summary of Shooting Range Cleanups in Florida."



general law. The Legislature, in s. 768.28, F.S., has expressly waived sovereign immunity in tort actions for claims against its agencies and subdivisions resulting from the negligent or wrongful act or omission of an employee acting within the scope of employment, but established limits on the amount of liability. Section 768.28(5), F.S., provides that a claim or judgment by any one person may not exceed \$100,000, and may not exceed \$200,000 paid by the state or its agencies or subdivisions for claims arising out of the same incident or occurrence.

Under the provisions of this bill, local, special district, or state public officials, agents, and employees are at risk for civil damages. Additionally, if a local, special district, or state official or employee fails to withdraw within the prescribed 30 days a pending civil, criminal, or administrative claim that falls within the parameters of this bill, such person risks damages, attorney's fees, and costs. These persons also risk criminal prosecution for a first degree misdemeanor if, while acting in their official capacity and within their scope of employment, they file a suit or are named as a party to a suit against a range otherwise immune under this bill.

Pursuant to s. 768.28(9)(a), F.S., an officer, employee, or agent of the state may not be held personally liable in tort or named as a party defendant for any injury that results from an act, event, or omission of action in the scope of her or his employment function unless the officer, employee, or agent acted in bad faith or with malicious purpose or exhibits wanton and willful disregard of human rights, safety, or property.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

The Department of Health's County Health Departments are responsible for identifying the source of lead resulting in a lead-poisoned child. The department reports that "[i]ndoor shooting ranges are known to be a source of lead poisoning for children of employees, and possibly customers, of shooting ranges. Employees and customers of shooting ranges have also been poisoned with lead from shooting ranges. There are also data that show lead contamination in soil greater than 400 parts per million can result in lead poisoning of some children. Contamination of the soil at an outdoor range that was later used for residential uses would represent a risk of lead poisoning to children living on that land."

The DEP reports that "[e]nvironmental data from many ranges indicates significant lead and arsenic contamination of soils (so much so that many of these soils fail the federal hazardous waste leaching test for a hazardous waste), ground water contamination, and, in some cases, off-site surface water contamination."

The National Rifle Association and Unified Sportsmen of Florida report that in DEP's lawsuit against the skyway Trap and Skeet Club, which has been in existence for almost 60 years, DEP "[a]ttempts to classify projectiles shot from firearms as 'solid waste' under Florida's environmental laws . . . [t]wists and misapplies the law in an attempt to classify the shooting

range 'a solid waste facility,' a 'solid waste disposal facility,' and a 'landfill' . . . [a]ttempts to classify a shooting range owner as the "operator of a landfill" who is therefore liable for the improper operation [of] a landfill . . . [alleges] that the shooting range is a landfill and is being operated unlawfully without a landfill permit issued by DEP."

**VIII. Amendments:**

None.

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

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