

# 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/SB 1156

SPONSOR: Committee on Judiciary and Senator Peadar

SUBJECT: Sport Shooting & Training Range Environment Liability Protection

DATE: January 7, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Lang</u>	<u>JU</u>	<u>FAV/CS</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	<u>NR</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill amends the law governing weapons and firearms as follows:

- Provides immunity for all shooting and training ranges (“ranges”) from any administrative, criminal and civil claim arising from the placement or accumulation of projectiles on the range or other property over which the range has the legal right to use.
- Enumerates legislative findings in support of the immunity for sport shooting and training ranges.
- Requires all pending administrative or judicial claims subject to this bill to be withdrawn from the tribunal within 30 days after the bill becomes law.
- Creates a civil cause of action for treble damages, attorney’s fees and costs for any person injured as a result of a claim filed in violation of this law.
- Creates a third-degree felony offense if any official, employee or other agent of a public entity willfully and knowingly participates directly or indirectly in bringing a claim for the placement or accumulation of projectiles against any owner, operator or user of a sport shooting and training range.
- Provides that the Legislature will pre-empt the regulation of the environmental effects of projectile deposition and accumulation 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 limited funded project 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 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 EPA to administer and enforce a state hazardous waste regulatory program in lieu of the federal program so long as the

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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 bill 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.

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

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 contracts 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:

The bill’s stated legislative intent is to protect *all* sport shooting ranges and those associated with those ranges from liability by prohibiting any judicial or administrative claim. 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>

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<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 over concerns with its environmental safety.

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

<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.”

Specifically, the bill relieves any sport shooting and training range, including an owner, operator, or user, from any administrative regulation or criminal or civil liability “associated with the intentional or unintentional placement or accumulation of projectiles in the environment on or under the range and any other property over which the range has a leasehold, easement, or legal right to use.” The term “environment” is defined such 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 to use.

Therefore, any existing state law, agency rule, local ordinance and special district regulation which could be the basis for a claim against a range for the effects of projectile deposits or accumulation are rendered unenforceable. Additionally any claim arising from projectile deposits or accumulation that could be the basis for a criminal or civil action is not allowed. Any existing claim against a sport shooting range, owner, or user, that is pending before a judicial or administrative tribunal must be withdrawn within 30 days after the bill becomes law. Any person injured by a claim filed in violation of the section gives the injured person a civil cause of action for treble damages, reasonable attorney fees, and costs. The bill does not state the nature of the injury that is necessary to trigger recovery. Additionally, any official, employee or other agent of a public entity who willfully and knowingly brings, or is a party to bringing an action under this created section, commits a third-degree felony. Action is not defined but presumably encompasses administrative, criminal or civil action.

The bill also provides this immunity to any person or entity, whether commercially or socially organized, who uses the shooting and training range. The immunity also applies to any person who previously owned or operated a private range or an interest in the range, and to an employee, agent, contractor, or customer of the range.

Public owner or operator is further defined to mean a state, county, a municipal corporation, a state university, or college, or a school district. Other terms defined include “owner,” “operator,” “projectile,” and “user.”

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

- Over 400 public and private ranges exist in the state.
- Citizens use and enjoy ranges.
- Ranges are a necessary component of the guarantees 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.
- Environmental litigation by state and local agencies is cost-prohibitive to defend and threatens the viability of the shooting range industry which would affect a citizen’s constitutional right to keep and bear arms.

The bill states that the *Legislature* pre-empts the entire field of regulating the environmental effects of projectile deposition at sport shooting and training ranges. This pre-emption 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). The pre-emption as stated may also implicitly designate the Legislature as the enforcement entity for the regulation of environmental laws.

The bill also provides that the law must be liberally construed to give effect to its remedial and deterrent purposes. The bill provides that the act is effective upon becoming 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:

This bill implicates several provisions of the *Florida Constitution* including rights recognized under common law.

*Right of Access to the Courts*: Since the bill extinguishes pending causes of actions for rights vested and common laws rights established before the enactment of this law, the bill implicates the constitutional right of access to the courts. *See* s. 21, Art. I of the *Fla. Const.*. The Legislature, however, may restrict access under certain circumstances:

[W]here a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla.Stat. s 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown. *See Kluger v. White*, 281 So.2d 1, 4 (1973).

By immunizing shooting and training ranges against a potentially broad category of claims, this bill may abolish causes of action such as common-law causes of action for negligence or nuisance which may predate the adoption of the access to courts provision in the 1968 state constitution. This bill provides no alternative to seeking redress for injuries nor provides any commensurate benefit in exchange for limiting or abolishing

recovery of damages. The constitutionality of this bill rests on whether the Legislature demonstrates that there is an overwhelming public necessity for this immunity and that there is no alternative means to achieving the necessity.

Due Process: Both the Fourteenth Amendment to the Constitution of the United States and Article I, section 9 of the Florida Constitution forbid the state from depriving a person of life, liberty or property without due process of law. Procedurally, this requires that a party be granted notice and an opportunity to be heard before any such deprivation.<sup>13</sup> This bill extinguishes any cause of action arising from a pending civil or criminal suit by requiring such suit whether in court or before an administrative agency to be withdrawn within 30 days after the bill becomes law. No other procedural due process is afforded. If the suit is not withdrawn, the public official or entity or private person could be subject to treble damages, attorney's fees, and costs.

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>14</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 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 third-degree felony 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,

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<sup>13</sup> See *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Department of Administration*, 411 So.2d 184 (Fla. 1982).

<sup>14</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.*

the official, agent or employee is also subject to treble 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 immunized from liability may significantly reduce the costs of doing business. Those ranges for which compliance with environmental laws, including reclamation measures to clean up contamination and pollution, are cost-prohibitive may otherwise avert bankruptcy or closure.

Individuals and property owners, including agricultural landowners who might have claims for environmental, health or economic injuries resulting from lead or arsenic from projectiles placed or accumulating in the air, water or soil of their property, will no longer be able to bring suit against ranges and the owners, operators or users thereof.

**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>15</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

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<sup>15</sup> See 12/22/03 DEP draft chart entitled: "Summary of Shooting Range Cleanups in Florida."

matching dollars contingent upon state or local enforcement of environmental laws or the establishment and enforcement of state environmental regulatory programs.

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 treble damages, attorney's fees, and costs. These persons also risk criminal prosecution for a third-degree felony if they file a suit or are named as a party to a suit against a range otherwise immune under this bill.

No fiscal impact figures are available yet from the Criminal Justice Estimating Conference.

No information is available yet from the law enforcement community regarding any difficulties resulting from the closures of shooting and training ranges or the nonavailability of shooting ranges for practice and training resulting from environmental civil or criminal litigation.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.