

# 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/SB 1156

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

SUBJECT: Sport Shooting & Training Range Environment Liability Protection

DATE: February 19, 2004 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>NR</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This Committee Substitute for CS/SB 1156 (CS) amends the law governing weapons and firearms as follows:

- Provides limited immunity for all shooting and training ranges (“ranges”) identified to the Department of Environmental Protection by September 30, 2005, from any administrative, criminal, and civil claims brought by the state, a special district, or political subdivision and 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 from state claims for sport shooting and training ranges.
- Requires all pending administrative or judicial claims subject to this CS to be withdrawn from the tribunal within 30 days after the CS becomes law; prohibits any governmental entity from benefiting financially from such action; provides for the governmental entity to pay attorney’s fees and costs of litigation and resulting damages.
- Creates a civil cause of action for damages, attorney’s fees, and costs for any person injured as a result of a claim filed in violation of this law.
- Creates 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 CS.
- Creates certain duties within the Department of Environmental Protection with regard to contamination assessment and cleanup of ranges.
- Creates a duty to use risk-based corrective action, using the most fiscally responsible approach in the cleanup process.

- Creates a method by which the department may seek judicial intervention for the purpose of fulfilling its duties under limited circumstances.
- Requires the department to notify ranges when the Act passes and to establish a range identification process.
- Ranges identified to the department by September 30, 2005, may not be required to pay for the cost of the initial cleanup.
- The CS restricts governmental entities other than the state from initiating any activity related to environmental issues, except under certain restricted circumstances.
- The CS provides that funds from the Water Quality Assurance Trust Fund may be used for expenses associated with this Act.
- 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 CS 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.

---

<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.

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 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 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

---

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

<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 over concerns with its environmental safety.

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

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 CS creates s. 790.33, F.S., to protect *all* sport shooting ranges and persons associated with those ranges from certain environmental liability to the state, a special district, or political subdivision. 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>

Specifically, the CS provides limited liability for any sport shooting and training range identified to the Department of Environmental Regulation by September 30, 2005, including an owner, operator, or user, from any administrative regulation or criminal or civil liability to the state, a special district, or political subdivision which is “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.

Any claim that was brought by the state, a special district, or a political subdivision, pending before a judicial or administrative tribunal as of January 1, 2004, against a sport shooting range, owner, or user, must be withdrawn within 30 days after the CS becomes law. Failure to withdraw the claim may be penalized under the provisions of the CS, resulting in a criminal misdemeanor charge, as set forth in subsection (6) of the newly-created statute. Additionally, any 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.

---

<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.”

The CS provides that no state agency, or other political subdivision may benefit financially or otherwise from a pending action in which a judgment, legal action, or other recourse has been entered in its favor. The state agency or other political subdivision is required by the CS to pay all costs of litigation, reasonable attorney fees, paralegal fees, and damages in any action that is prohibited by this CS.

Any private or public owner, operator, employee, agent, contractor, customer, or user of a range injured by a claim filed in violation of the section gives the injured person a civil cause of action for damages, reasonable attorney fees, and costs. The CS does not state the nature of the injury that is necessary to trigger recovery.

The CS requires certain duties be fulfilled by the Department of Environmental Protection and provides a method by which those duties may be accomplished. These duties and methods are as follows:

- Develop a plan and procedures for review, contamination assessment, and cleanup of ranges *if there is credible reason to believe the projectile accumulation poses an immediate threat to the environment or human health.*
- Provide 60 days notice of the intent to enter the range to conduct an assessment to the range owner or other associated party as listed in the CS.
- Apply principles of risk-based corrective action pursuant to existing law.
- Site cleanup may be conducted by the department *if*:
  - the department has proven by competent substantial evidence that the effect of accumulated projectiles is violative of laws or rules and is causing an unreasonable risk of injury or death to humans or the environment,
  - the evidence has been presented to the range owner or other listed party,
  - permission has been sought for entrance to the range, with 120 days' notice,
  - permission has been granted, and
  - funding is available to clean up the range, without delay, using the most fiscally responsible approach.
- If the department has complied with certain conditions listed above and been denied access to the range for cleanup, it may seek judicial intervention:
  - the range owner or other listed party may rebut the department's claims,
  - the prevailing party may recover related costs and fees from the other party.

The CS requires the Department of Environmental Protection to notify ranges known to it of the passage of this act, and any rights and obligations of the owners and operators resulting from its passage.

With regard to the identification of ranges within the state, the Legislative Findings in the CS 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 CS requires the department to develop the necessary guidelines and establish a range identification process no later than October 1, 2004. The department must make a reasonable effort to notify the public of the identification requirements, including providing legal notice

pursuant to ch. 50, F.S. The department shall bear the associated costs. Further, the department shall develop an education program to assist identified ranges and promote the use of best management practices to limit environmental impact.

The owner of a range must identify themselves to the department, providing a minimum the name and legal address of the owner and address and legal description of the range. For ranges in existence on or before October 1, 2004, this must occur by September 30, 2005. Ranges established after October 1, 2004, must identify themselves within one year of establishment.

By requiring the range owners to identify their ranges, the department can effectively determine which ranges in the state will be provided a state-funded initial cleanup. The CS requires the state to bear the cost of the contamination assessment and initial cleanup of ranges identified to the department by September 30, 2005. The limited liability granted by the CS to ranges identified to the department by September 30, 2004, ends after the initial cleanup of those ranges. Subsequent cleanups at those ranges will be borne by the owner or other listed party. New ranges, or those that do not comply with the identification requirements, will bear the costs of any cleanups.

The effect of the provisions explained above should be that the department is made aware of the number of ranges that may require a state-funded cleanup, the process for assessment and cleanup is provided, and the ranges that come into existence after the September 30, 2005, date will not be cleaned up at state expense, because they should be educated as to how to avoid environmental contamination, and are on notice that the range must bear the cost of any cleanup that is shown to be necessary.

The CS clarifies that no governmental entity other than the department may initiate or conduct investigations, cleanups, or other activities related to environmental issues unless under the supervision of the department.

The CS provides that funds from the Water Quality Assurance Trust Fund may be used for expenses associated with the CS.

A subsection of the CS states: “This section *does not relieve the state* of its duty to absorb the costs of environmental cleanups of sport shooting or training ranges *under other circumstances.*” It appears that the effect of this provision is to clarify that if a range is in violation of environmental rules or laws where contaminants other than accumulated lead projectiles are the source, existing duties apply.

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.
- 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.

There is Legislative Intent language in the CS that states that the Legislature intends to protect and immunize range owners and other listed parties from environmental liability and to prevent actions by governmental entities which "threaten to destroy or bankrupt" them.

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

**Section 2** of the CS 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 CS 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,

<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.*

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 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, is cost-prohibitive may otherwise avert bankruptcy or closure, if they comply with the identification process set forth in the CS, as they will be entitled to a state-funded cleanup.

The limitation on environmental liability for range owners 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 CS 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 CS, 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 CS 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 CS 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.

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.

***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 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.

---

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

Under the provisions of this CS, 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 CS, 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 CS.

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:**

None.

**VIII. Amendments:**

None.

---

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

---