STORAGE NAME: h3323.cp
DATE: March 13, 1998

HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: **HB 3323**

RELATING TO: Sport Shooting Ranges

SPONSOR(S): Representatives Fuller & Feeney

COMPANION BILL(S): SB 1096

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CRIME AND PUNISHMENT
(2) CIVIL JUSTICE AND CLAIMS
(3)
(4)
(5)

I. SUMMARY:

The bill relieves sport shooting ranges which are in compliance with any noise control laws or ordinances adopted by a unit of local government applicable to the range at the time of construction and initial operation from civil and criminal liability for any claim of noise pollution.

The bill prohibits state courts from enjoining the operation of any such sport shooting range.

The bill exempts sport shooting ranges from the effect of any rules created or amended by departments or agencies after the initial operation of the range.

The bill prohibits any person from bringing a nuisance claim against such sport shooting ranges in which there has been no substantial change in the nature of use from its initial operation. The bill does not exclude the possibility of criminal prosecution for substantial changes in operation.

The bill makes users of sport shooting ranges accept the risks associated with the sport to the extent that the risks are obvious and inherent.

The effective date is “upon becoming a law.”

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Civil Liability For Noise Pollution

The right to enjoy one's property without interference from others was brought to this country with the common law and has long been recognized by the Florida Supreme Court:

> An owner or occupant of property must use it in a way that will not be a nuisance to others, owners and occupants in the same community. Anything which annoys or disturbs one in the free use, possession, or enjoyment of his property or which renders its ordinary use or occupation physically uncomfortable may become a nuisance and may be restrained.

Knowles v. Central Allapattae Properties, Inc., 145 Fla. 123, 130 (1940), quoting Mercer v. Keynton, 121 Fla. 87 (1935). The courts, also, have recognized that the remedy for annoying noise is properly found in a claim for nuisance.

> That mere noise may be so great at certain times and under certain circumstances as to amount to an actionable nuisance and entitle the party subjected to it to the preventive remedy of the court of equity is thoroughly established. The reason why a certain amount of noise is or may be a nuisance is that it is not only disagreeable but it also wears upon the nervous system and produces that feeling which we call 'tired.' That the subjection of a human being to a continued hearing of loud noises tends to shorten life, I think, is beyond all doubt. Another reason is that mankind needs both rest and sleep, and noise tends to prevent both. [cites omitted]

Rae v. Flynn, 690 So. 2d 1341, n.1 (Fla. 3rd DCA 1997).

Criminal Liability For Noise Pollution

The state is free to create laws regulating the level and location of noise. For example, s. 403.031, F.S., defines noise as pollution which may be regulated by the state for the general health and welfare of its citizens. Section 403.415, F.S., defines Florida's Motor Vehicle Noise Prevention Act which regulates automobile, and road construction, noise levels affecting residential areas. Similarly, state departments and agencies may promulgate rules affecting the environment. See, s. 20.255, F.S.

The state, also, may impose criminal sanctions for noise pollution. For example, s. 316.65, F.S., permits a misdemeanor conviction for loud automobile or marine mufflers. It also permits counties to adopt more stringent noise control ordinances.

Finally, local governments have the authority to pass ordinances regulating the protection of their air quality, to include noise pollution. See, s. 125.01, F.S.; and e.g., Easy Way of Lee County, Inc. v. Lee County, 674 So. 2d 863 (Fla. 2nd DCA 1996). These ordinances may also impose criminal sanctions. See, e.g., M.C. v. State, 695 So. 2d 477 (Fla. 3rd DCA 1997).

Civil Liability For Injuries

A tort, as defined by Black's Law Dictionary, is "A private or civil wrong or injury ... for which the court will provide a remedy in the form of an action for damages." For example, all automobile owners have a duty to maintain their vehicles and obey the traffic laws. If a particular driver's failure to stop at a red light results in his striking a pedestrian, then the pedestrian may recover damages from the driver for his medical bills and lost wages for breaching the duty to stop at all red lights. Similarly, merchants who invite people to enter upon their premises in order to profit from them, have an even higher duty to maintain their premises so that their customers do not slip and fall, or have merchandise fall onto their heads.

Conversely, college football players (ordinarily) may not sue their alma maters for an injury received while playing the game because the risks undertaken by the player are so obvious and inherent in the sport, that it must be understood the player accepted those risks when he chose to play the game.

B. EFFECT OF PROPOSED CHANGES:

Relieves Shooting Ranges Of Liability For Noise Pollution

The bill relieves sport shooting ranges from civil and **criminal liability** for any claim of **noise pollution**, if the range was in compliance with any noise control laws or ordinances applicable to the range at the time of construction and initial operation, and the range experienced no substantial change in the nature of use.

To this end, the bill also:

- prohibits state courts from enjoining the operation of any such sport shooting range;
- exempts such sport shooting ranges from any rules (regarding noise control) of departments or agencies, made or amended after initial operation;
- prohibits any person from bringing a nuisance claim against such sport shooting ranges in which there has been no substantial change in the nature of use from its initial operation. (Specifically, does not exempt shooting ranges from actions for negligence or recklessness in the operation of the range.)

Exempts Shooting Ranges From Rules

The bill exempts sport shooting ranges from the effect of any rules created or amended by departments or agencies after the initial operation of the range.

Relieves Shooting Ranges Of Liability For Injuries

The bill makes users of sport shooting ranges accept the risks associated with the sport to the extent that the risks are obvious and inherent. Those risks include, but are not limited to injuries that may result from:

- noise,

- discharge of a projectile or shot,
- malfunction of sport shooting equipment not owned by the sport shooting range,
- natural variations in terrain,
- surface or subsurface snow or ice conditions,
- bare spots,
- rocks, trees, and other forms of natural growth or debris.

Effective Date

The effective date is “upon becoming a law.”

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill decreases local and state government’s authority to promulgate rules regarding the regulation of sport shooting ranges.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Individuals owning or operating sport shooting ranges are freer to run their businesses without worry of being sued or prosecuted.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill prohibits local governments from imposing new rules upon sport shooting ranges which have not substantially changed their use.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

New statute.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Prohibits nuisance claims for noise against sport shooting ranges which are in compliance with all noise law and ordinances at the time of construction and initial operation. See, Effect of Proposed Changes.

Section 2: Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

   See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

   See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   See, Fiscal Comments.

2. Direct Private Sector Benefits:

   See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

   See, Fiscal Comments.

D. FISCAL COMMENTS:

The bill will have no fiscal impact. To the contrary, it would reduce the number of criminal prosecutions by local government ordinance because it makes operators of sport shooting ranges immune from prosecution for violations of any ordinances (relating to noise or otherwise) created or amended after the date of the enactment of the bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not mandate the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

Which Dangers Are Obvious and Inherent?

Generally, a participant assumes the risks involved with a particular sport. Whether the risks were obvious and inherent is the central issue in a claim for damages in such a case. Under current law, it is a question for the jury to decide. Nonetheless, the bill lists several risks which it deems to be "obvious and inherent" to the sport of shooting. The list includes: noise, discharge of a projectile or shot, malfunction of sport shooting equipment not owned by the sport shooting range, natural variations in terrain, surface or subsurface snow or ice conditions, bare spots, rocks, trees, and other forms of natural growth or debris. Consequently, it would appear the bill prohibits tort claims for injuries suffered in connection with any of the aforementioned items.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:	Legislative Research Director:
Jamie Spivey	J. Willis Renuart