

STORAGE NAME: h0067z.cp
DATE: May 27, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
CRIME AND PUNISHMENT
FINAL ANALYSIS**

BILL #: HB 67
RELATING TO: Sport Shooting Ranges
SPONSOR(S): Representative Fuller
COMPANION BILL(S): SB 776

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

- (1) CRIME AND PUNISHMENT YEAS 4 NAYS 2
- (2) JUDICIARY YEAS 9 NAYS 0
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

On April 20, 1999, HB 67 was approved by the Governor and became Chapter 99-134, Laws of Florida.

II. SUMMARY:

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 local noise control laws or ordinances at the time of construction and initial operation, and the range experienced no substantial change in the nature of use.

The bill prohibits state courts from enjoining the use or operation of a sport shooting range on the basis of nuisance claims brought on by noise or noise pollution, if the range was in compliance with any noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.

The bill exempts sport shooting ranges from the regulatory changes that limit outdoor noise levels if the new regulations were passed after the time of construction and initial operation.

The bill prohibits any person from bringing a nuisance claim against a sport shooting ranges in which there has been no substantial change in the nature of use from its initial operation. The bill does not exempt shooting ranges from actions for negligence or recklessness in the operation of the range.

The effective date is "upon becoming a law."

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Common Law Nuisance And 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:

[A] property owner may put his property to any reasonable and lawful use, so long as he does not thereby deprive the adjoining landowner of any right of enjoyment of his property which is recognized and protected by law, and as long as his use is not such a one as the law will pronounce a nuisance . . . The reasonableness of such use must be determined according to circumstances of each case and in accordance with established legal and equitable principles (citations omitted).

Reaver v. Martin Theatres of Florida, Inc., 52 So.2d 682, 683 (Fla. 1951).

It is a tenet of Florida law that excessive noise pollution caused by the activities of one property owner provides an adjacent property owner with the right to seek the common law remedy of nuisance and to attempt to enjoin the activity giving rise to the noise. Rae v. Flynn, 690 So.2d 1341 n.1 (Fla. 3d DCA 1997).

The bill may be read to provide sport shooting range owners with what amounts to a statutory easement for noise interference with lawful uses of neighboring property. Notwithstanding whether a local government passes restrictive ordinances, which the bill effectively nullifies, the rights of citizens to enjoy the use of their property and to defend such use under the law of nuisance would be eliminated in many cases.

State Regulation Of Noise Pollution

Florida law provides a multi-faceted regime for the regulation 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).

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.

The bill prohibits state courts from enjoining the use or operation of a sport shooting range on the basis of nuisance claims brought on by noise or noise pollution, if the range was in compliance with any noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.

Exempts Shooting Ranges From Rules

The bill exempts sport shooting ranges from the regulatory changes by departments or agencies that limit outdoor noise levels if the new regulations were passed after the time of construction and initial operation.

The bill prohibits any person from bringing a nuisance claim against a sport shooting ranges in which there has been no substantial change in the nature of use from its initial operation. The bill does not exempt shooting ranges from actions for negligence or recklessness in the operation of the range.

Subsection (6) of the bill permits a sport shooting range to continue operating even if it does not conform to *any* adopted or amended ordinance after the effective date of this bill provided the range is not in violation of existing law at the time of the enactment of an ordinance applicable to the sport shooting range. There is no restriction that the new or amended ordinance pertain to noise or noise pollution.

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 enforce 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?

No agency program is eliminated or reduced.

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

None.

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

None.

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 right of property owners to bring suit against sport shooting range operators for common law nuisance will be eliminated under certain circumstances. Moreover, the bill prohibits local governments from enforcing new rules on sport shooting ranges that meet noise ordinance requirements at the time of their construction or initial use.

5. Family Empowerment:

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

The bill does not purport 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:

The bill does not create or change a program providing services to families or children.

- (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 ANALYSIS:

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.

IV. FISCAL ANALYSIS & 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, according to the Criminal Justice Estimating Conference. 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.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it does not mandate the expenditure of funds,

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

The bill is nearly identical to CS/HB 3323 which was voted out favorably by the Crime & Punishment Committee during the 1998 legislative session.

Subsection (6) of the bill may deny common law causes of action for nuisance. This may be an unconstitutional denial of access to the courts because there is not a reasonable alternative to the common law action for the redress of injuries. See *Kluger v. White*, 281 So.2d 1 (1973); see also *Owens-Corning Fiberglass Corp. v. Corcoran*, 679 So.2d 291 (Fla. 3d DCA 1996), *rehearing denied*, *review denied*, 690 So.2d 1300; *Johnson v. R. H. Donnelly Co.*, 402 So.2d 518, (Fla. 1st DCA 1981), *rev. den.*, 415 So.2d 1360.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill was amended on the House floor to make it identical to SB 776. The amendment provided that the shooting ranges are not exempt from local ordinances requiring the range to conform to current National Rifle Association gun safety and shooting range standards. This amendment could raise questions about an unconstitutional delegation of legislative powers because a private gun lobby would have the ability to determine which local safety ordinances are preempted by state statute.

VIII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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