

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 776

SPONSOR: Senators Bronson and Kirkpatrick

SUBJECT: Sport Shooting Ranges

DATE: March 15, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/1 amendment</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill relieves all indoor and outdoor sports shooting ranges from certain civil and criminal liability and nuisance actions as follows:

- provides immunity from civil and criminal liability for any person who operates or uses a sport shooting range from certain actions based on noise or noise pollution under certain circumstances;
- eliminates the common law cause of action for nuisance based on claims of noise or noise pollution against sports shooting ranges if the range is in compliance with ordinances at the time of construction or initial operation;
- prohibits courts from issuing injunctions based on noise or noise pollution against sports shooting ranges under certain circumstances;
- exempts certain sports shooting ranges from state or agency regulation governing noise decibel levels;
- eliminates the common law cause of action for nuisance on any claim by a property owner adversely affected by a sport shooting range if there has been no substantial change in the use of the range;
- precludes enforcement against certain sports shooting ranges for violation of subsequently adopted or amended ordinances; and
- provides that local governments are not prohibited, to the extent not limited by the act, from regulating the location and construction of sport shooting ranges.

This bill creates a new, unspecified section of law.

II. Present Situation:

Shooting ranges are typically associated with a club and provide a wide range of recreational and training services and products for private, commercial, law enforcement and military persons. There is no statewide regulation of shooting ranges although they are subject to local government

regulation and federal regulatory standards. There is no formal accreditation association in Florida for shooting ranges although efforts are underway to establish an association. The National Rifle Association often provide 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.

In recent years, 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 have made issues such as noise, operational hours, and safety the focus of local government ordinances, complaints by surrounding property owners, and lawsuits against sport shooting ranges. Those ranges most affected have been those subject to subsequent population encroachment and development of surrounding property. A number of states have responded by enacting anti-nuisance exceptions for sport shooting ranges. In 1998, Colorado, Kentucky, Utah and Wisconsin enacted similar types of legislation.

The state of Florida has no such anti-nuisance statute. However, it is not known how many of the aforementioned states have constitutional provision for the abatement of excessive and unnecessary noise. *See* § 7, art. II, Fla. Const. The Florida Legislature has also enacted a variety of laws to regulate noise.¹ There is also a criminal offense for nuisances that “tend to annoy the community or injure the health of the citizens in general, or to corrupt the public morals” which is punishable as a second degree misdemeanor. *See* § 823.01, F.S. However, this statute has been superseded in part by chapter 403, F.S., to the extent that it applies to air pollution. *See State v. SCM Glidco Organics Corp.*, 592 So.2d 710 (Fla. 1st DCA 1992). Additionally certain counties and municipalities, as a result of constitutionally and legislatively recognized “home rule” powers, have passed ordinances regulating the protection of their air quality, to include noise pollution. *See* § 125.01, F.S. (Supp. 1998) & § 166.021, F.S.

Current Florida law recognizes a common law right to enjoy one’s property without interference from others based on nuisance actions. *See Reaver v. Martin Theaters of Florida, Inc.*, 52 So.2d 682 (Fla. 1951); *see also, Rae v. Flynn*, 690 So.2d 1341 FN1 (Fla. 3d DCA 1997)(common law right to a cause of action for nuisance for excessive noise pollution caused by activities of adjacent property owner).

III. Effect of Proposed Changes:

This bill relieves any person operating or using a sport shooting range from civil and criminal liability for any action relating to noise or noise pollution, provided the range is in compliance with any noise

¹*See* § 20.55, F.S. (state departments and agencies may promulgate rules affecting the environment); § 316.65, F.S. (misdemeanor conviction for loud vehicles or marine mufflers); § 327.65, F.S. (auto muffling devices); § 332.007, F.S. (reimbursement to cities, counties or airport authorities for land acquisition needed for airport safety, expansion, tall structure control, clear zone protection, or noise impact reduction); § 333.02. (exercise of police power to prevent incompatible land use involving airport hazards); § 333.03, F.S. (requiring noise study conducted in accordance with federal regulation prior to residential construction or educational facilities in vicinity of airports); § 335.17, F.S.(noise abatement in state highway construction); § 403.031, F.S.(definition of pollution includes “noise”); § 403.061, F.S. (legislative duty of the Department of Environmental Protection to “. . . [e]stablish ambient air quality and water quality standards for the state as a whole or for any part thereof, and also standards for the abatement of excessive and unnecessary noise.”; and § 403.415, F.S. (motor vehicle noise).

control laws or ordinances applicable to the range at the time of its construction or initial operation. It also precludes certain property owners from initiating a nuisance action unless there has been a substantial change in the use of the range.

Specifically, **section 1** provides the following:

Subsection (1) provides definitions for “unit of local government”, “person”, and “sport shooting range or ranges.” “Sport shooting range” is defined as an area designed and operated for the use of rifles, shotguns and pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport shooting.

Subsection (2) provides immunity from civil or criminal liability for a person in any matter relating to noise or noise pollution resulting from the operation or use of a sport shooting range. However, in order to be immune, the range is in compliance with noise control laws or local ordinances that were in effect and applicable at the time the range was constructed or initially operating.

Subsection (3) specifies that a person who operates or uses a sport shooting range is not subject to an action for nuisance. In addition, a state court is prohibited from enjoining the use or operation of the range on the basis of noise or noise pollution if it is in compliance with the provisions of subsection (2).

Subsection (4) provides that shooting ranges exempt from liability under this act are similarly exempt from the regulations by any state department or agency that limits outdoor noise decibel levels if the new regulations were passed after the time of construction and initial operation.

Subsection (5) prohibits certain persons from proceeding with a nuisance action against a shooting range owner to restrain, enjoin or impede the use of the range when there has not been a substantial change in the nature of the use of the range. Those persons precluded from a legal cause of action are persons who acquire title to or own real property adversely affected by the use of property with a permanently located and improved sport shooting range. This subsection expressly exempts actions for negligence or recklessness from the provisions of this bill. “Substantial change” is undefined,

Subsection (6) 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.

Subsection (7) states that, except as otherwise provided in the act, local governments are not prohibited from regulating the location and construction of a sport shooting range after the effective date of this act.

Section 2 provides that the act will take effect 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:

This bill implicates rights under the constitution and common law. The Florida Constitution provides that “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.” *See* article I, § 21, Fla. Const. The Legislature, however, may restrict access to courts under certain circumstances:

Where a right of access to courts for redress for a particular injury has been provided by statutory law predating the adoption of Declaration of Rights of Constitution of Florida, or where such right has become a part of common law of state, legislature is without power to abolish such a right without providing a reasonable alternative to protect rights of people of state to redress for injuries, unless legislature can show an overpowering public necessity for abolishment of such rights, and no alternative method of meeting such public necessity can be shown. *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.

The bill abrogates certain common law causes of action for nuisance under certain circumstances.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is indeterminate how many sport shooting ranges there are in the state or how many ranges would benefit from immunity for civil or criminal liability for violations of ordinances subsequently adopted or amended which are applicable to sport shooting ranges. Sport shooting ranges may benefit from the relief of liability and legal action arising from subsequently adopted

or amended ordinances which would otherwise require the range to comply or cease operation. Presumably a sport shooting range must maintain compliance with the state law or local ordinances applicable at the time the range was constructed or initially operated in order to be exempt from civil or criminal action and liability under this section.

Certain property owners whose property are adversely affected by the use of sport shooting ranges may no longer seek injunctive relief based on a nuisance claim against the range unless there has been substantial change in the use of the range.

C. Government Sector Impact:

The bill precludes local governments from enforcing subsequently adopted or ordinances applicable to sport shooting ranges who are in compliance with certain ordinances at the time of their initial construction or operation. Additionally, other governmental entities, including state agencies, are precluded from holding a sport shooting range liable in any civil or criminal matter relating to noise or noise pollution if the range is in compliance with the laws or local ordinances applicable to range at the time of its construction or initial operation. Specifically, the Department of Environmental Protection and certain other agencies will no longer be able to enforce regulations relating to outdoor noise decibel levels against sport shooting ranges.

The bill does not limit a local government's ability to regulate the initial location or construction of new ranges but would impact a governmental entity's future regulation of these ranges if the governing law or local ordinance at the time of construction or initial operation of the range were to be subsequently amended.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- Subsection (3) is not altogether clear whether a range is protected from an action for nuisance, or solely protected against an action for nuisance on the basis of noise of noise pollution.
- Subsection (5) does not provide a definition for "substantial change" nor is a time frame provided in which the substantial change might occur. This subsection also appears to conflict with subsection (3). Read together, a court would not be able to provide injunctive relief to someone proceeding under subsection (3) even if there had been substantial change in the use of the range. In addition, it is not altogether clear in subsection (5) whether it is the property owner or the owner's property that must be adversely affected by the use of the property with the range.

VIII. Amendments:

#1 by Comprehensive Planning, Local and Military Affairs Committee:

This amendment to subsection (6) explicitly exempts shooting ranges from any newly adopted or amended local ordinance if the range was not in violation of any law when it was constructed, and the range currently conforms to National Rifle Association gun safety and shooting range standards.

#2 by Judiciary Committee:

This amendment to subsection (5) removes the term “substantial” to require a “change” rather than a “substantial change” in the nature of the use of the range before a person who owns property adversely affected by the range may file a nuisance action.

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