

By the Committees on Criminal Justice; Judiciary; and Senators  
Peadar and Posey

307-1997-04

1                                   A bill to be entitled  
2           An act relating to sport shooting and training  
3           range environmental liability protection;  
4           creating s. 790.333, F.S.; providing  
5           legislative findings and intent; providing  
6           definitions; specifying immunity from liability  
7           for certain persons or entities from certain  
8           claims relating to projectiles at sport  
9           shooting and training ranges; providing a  
10          limitation; requiring withdrawal of certain  
11          claims from courts or administrative agencies  
12          after a certain date; providing that certain  
13          legal actions found in favor of the state may  
14          not benefit the state; requiring the state to  
15          pay all costs of litigation, attorney's fees,  
16          damages, and economic loss for certain legal  
17          actions found in its favor; requiring the  
18          Department of Environmental Protection to  
19          develop a plan to conduct review and cleanup;  
20          requiring the department to conduct an  
21          environmental cleanup under certain  
22          circumstances; providing duties and  
23          restrictions on the department and ranges;  
24          creating an identification process; authorizing  
25          the department to develop guidelines;  
26          authorizing the department to use funds from  
27          the Water Quality Assurance Trust Fund for  
28          expenses associated with the act; providing  
29          criminal penalties; specifying preemption by  
30          the state; providing for construction;  
31          providing an effective date.

1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Section 790.333, Florida Statutes, is  
4 created to read:

5 790.333 Sport shooting and training range protection;  
6 liability; claims, expenses, and fees; penalties; preemption;  
7 construction.--

8 (1) LEGISLATIVE FINDINGS.--

9 (a) The Legislature finds that more than 400 sport  
10 shooting and training ranges exist on public and private lands  
11 throughout this state.

12 (b) These sport shooting and training ranges are  
13 widely used and enjoyed by the residents of this state and are  
14 a necessary component of the guarantees of the Second  
15 Amendment to the United States Constitution and of s. 8, Art.  
16 I of the State Constitution.

17 (c) Many of these ranges are used by state and local  
18 law enforcement agencies for training, practice, and regular  
19 mandatory qualification by law enforcement officers; by hunter  
20 safety instructors of the Fish and Wildlife Conservation  
21 Commission who teach adults and youngsters the safe use and  
22 handling of firearms in preparation for obtaining hunting  
23 licenses; by school boards, colleges, and universities for  
24 reserve officer training corps training and activities; by  
25 school shooting teams; by Olympic competitors; and by  
26 certified instructors who teach the safe use and handling of  
27 firearms in preparation for applying for licenses to carry  
28 concealed firearms for lawful self-protection.

29 (d) The public policy of this state is to encourage  
30 the safe handling and operation of firearms and mandates  
31 appropriate training in the safe use and handling of firearms

1 for persons licensed to carry concealed firearms and for  
2 persons licensed to hunt in this state. Sport shooting and  
3 training ranges throughout this state provide the location at  
4 which this important public purpose is served and at which the  
5 firearms training mandates are fulfilled.

6 (e) Projectiles are integral to sport shooting and  
7 training range activity and to the ownership and use of  
8 firearms.

9 (f) Over years of operation, projectiles have  
10 accumulated in the environment at many ranges, the  
11 environmental impact of which is disputed.

12 (g) Litigation has been initiated by certain state  
13 agencies, including the Department of Environmental Protection  
14 and the Southwest Florida Water Management District, against  
15 sport shooting and training range owners and operators seeking  
16 to compel such owners and operators to discontinue the use of  
17 certain projectiles and to investigate and remove accumulated  
18 projectiles under the theory that these projectiles were  
19 deposited without authorization under prevailing state  
20 environmental laws. The cost of defending these actions is  
21 prohibitive and threatens to destroy the sport shooting and  
22 training range industry.

23 (h) The elimination of sport shooting and training  
24 ranges would unnecessarily impair the ability of residents of  
25 this state to exercise and practice their constitutional  
26 guarantees under the Second Amendment to the United States  
27 Constitution and under s. 8, Art. I of the State Constitution.

28 (2) LEGISLATIVE INTENT.--The Legislature intends to  
29 protect and immunize sport shooting and training range owners,  
30 operators, users, employees, agents, contractors, and  
31 customers from environmental liability as described in this

1 act and to prohibit actions by the state, special purpose  
2 districts, or political subdivisions which threaten to destroy  
3 or bankrupt sport shooting and training ranges.

4 (3) DEFINITIONS.--As used in this act, the term:

5 (a) "Owner" means any person who owns or has owned a  
6 sport shooting or training range or any interest therein.

7 (b) "Operator" means any person who operates or has  
8 operated a sport shooting or training range.

9 (c) "Projectile" means any object expelled, propelled,  
10 discharged, shot, or otherwise released from a firearm, BB  
11 gun, airgun, or similar device, including, but not limited to,  
12 gunpowder, ammunition, lead, shot, skeet, and trap targets and  
13 associated chemicals, derivatives, and constituents thereof.

14 (d) "Environment" means the air, water, surface water,  
15 sediment, soil, groundwater, and other natural and manmade  
16 resources of this state.

17 (e) "User" means any person, partner, joint venture,  
18 business, or social entity or corporation, or any group of  
19 such persons or entities, organized or united for a business,  
20 sport, or social purpose.

21 (f) "Sport shooting and training range" or "range"  
22 means any area that has been designed or operated primarily  
23 for the use of firearms, rifles, shotguns, pistols,  
24 silhouettes, skeet, trap, black powder, BB guns, airguns, or  
25 similar devices or for any other type of sport or training  
26 shooting.

27 (4) SPORT SHOOTING AND TRAINING RANGE LIABILITY  
28 PROTECTION.--Notwithstanding any other provision of law, any  
29 private or public owner, operator, employee, agent,  
30 contractor, customer, or user of any sport shooting or  
31 training range located in this state, identified to the

1 department by September 30, 2005, as set forth in paragraph  
2 (7)(i) shall have limited liability to this state or any  
3 agency of the state, special purpose district, or political  
4 subdivision of this state for any claim associated with the  
5 intentional or unintentional placement, deposition, or  
6 accumulation of projectiles in the environment on or under  
7 that sport shooting or training range or any other property  
8 over which the range has an easement, leasehold, or other  
9 legal right of use. For purposes of this subsection, a public  
10 owner or operator means the state, a county, a municipal  
11 corporation, a state university or college, or a school  
12 district.

13 (5) PENDING AND FUTURE CLAIMS.--

14 (a) All claims from which private or public owners,  
15 operators, employees, agents, contractors, customers, or users  
16 of any sport shooting and training ranges are immunized under  
17 this section which are pending in any court of this state or  
18 before any administrative agency on January 1, 2004, shall be  
19 withdrawn within 30 days after the effective date of this act  
20 and failure to immediately withdraw such claim shall be a  
21 violation of this act and shall be penalized in accordance  
22 with subsection (6).

23 (b) No state agency, county, municipality, town,  
24 special purpose district, or other political subdivision may  
25 benefit financially or otherwise from any such action pending  
26 on or after January 1, 2004, in which any judgment or other  
27 legal action or recourse is or has been entered in favor of  
28 the state, any of its agencies, or a county, municipality,  
29 town, special purpose district, or other political subdivision  
30 against any private or public owner, operator, employee,  
31 agent, contractor, customer, or user of any sport shooting or

1 training range. The state, agency, county, municipality, town,  
2 special purpose district, or other political subdivision that  
3 brought such action shall immediately pay all costs of  
4 litigation and all reasonable attorney's fees, paralegal's  
5 fees, and damages for all economic and other losses resulting  
6 from the initiation of such claim for which this section  
7 provides immunity.

8 (c) Any private or public owner, operator, employee,  
9 agent, contractor, customer, or user of any sport shooting or  
10 training range injured as a result of a claim filed in  
11 violation of this section shall have a civil cause of action  
12 for damages, reasonable attorney's fees, and costs.

13 (6) PENALTIES.--Any official, employee, or other agent  
14 of this state or its agencies, or of a county, municipality,  
15 town, special purpose district, or other political subdivision  
16 of this state, who, while acting in his or her official  
17 capacity and within the scope of his or her employment or  
18 office, willfully and knowingly brings or is a party to  
19 bringing an action in violation of this section commits a  
20 misdemeanor of the first degree, punishable as provided in s.  
21 775.082 or s. 775.083.

22 (7) DUTIES.--

23 (a) The Department of Environmental Protection shall  
24 develop a plan and procedures for the reasonable review,  
25 contamination assessment, and cleanup of sport shooting and  
26 training ranges if there is credible reason to believe that  
27 the accumulation of projectiles on such ranges poses an  
28 immediate threat to the environment or to human health. The  
29 department shall give 60 days' notice to the sport shooting or  
30 training range owner, operator, tenant, or occupant of the  
31

1 department's intent to enter the site for the purpose of a  
2 contamination assessment.

3 (b) Principles of risk-based corrective action  
4 pursuant to s. 376.30701 shall be applied to sport shooting or  
5 training ranges.

6 (c) The department may enter a sport shooting or  
7 training range and conduct an environmental cleanup of the  
8 site under the following circumstances:

9 1. The department has proven by competent, substantial  
10 evidence through scientifically accepted documentation that  
11 the effect of accumulation of lead projectiles at the sport  
12 shooting or training range is in violation of laws and rules  
13 and is causing an unreasonable risk of injury or death to  
14 humans or the environment;

15 2. The department has presented scientifically  
16 accepted documentation of contamination at the sport shooting  
17 or training range to the sport shooting and training range  
18 owner, operator, tenant, or occupant;

19 3. The department has made a reasonable effort to  
20 obtain permission from the sport shooting or training range  
21 owner, operator, tenant, or occupant for entrance for the  
22 purpose of environmental cleanup;

23 4. The department has given 120 days' notice to the  
24 sport shooting or training range owner, operator, tenant, or  
25 occupant of the department's intent to enter the site for the  
26 purpose of an environmental cleanup; and

27 5. The sport shooting or training range owner,  
28 operator, tenant, or occupant has given permission to the  
29 department to conduct the environmental cleanup.

30 (d) In the event that the department has complied with  
31 the requirements of subparagraphs (c)1.-4. and been denied

1 permission to conduct the environmental cleanup, the  
2 department may seek judicial intervention for the purpose of  
3 fulfilling its duties.

4 (e) Should the department seek judicial intervention  
5 as authorized in paragraph (d), the owner, operator, tenant,  
6 or occupant shall have the opportunity to rebut the  
7 department's claims.

8 (f) Should the department seek judicial intervention,  
9 the prevailing party may recover related costs and fees from  
10 the other party or parties.

11 (g) Upon this act becoming law, the department shall  
12 initially notify those sport shooting and training ranges  
13 known to the department of the passage of this act and the  
14 rights and obligations of range owners and operators under  
15 this act.

16 (h) No later than October 1, 2004, the department  
17 shall establish a range identification process to identify the  
18 ownership and location of all sport shooting and training  
19 ranges in the state. The department is authorized to develop  
20 the guidelines necessary to implement the range identification  
21 process. However, the process for developing the guidelines by  
22 the department shall be strictly limited to the following  
23 activities:

24 1. In establishing the identification process, the  
25 department shall make a reasonable effort to notify the public  
26 of the identification requirements which shall include  
27 providing legal notice as provided in chapter 50.

28 2. Any costs associated with this identification  
29 process shall be borne by the department.

30 3. The department shall develop an education program  
31 to assist identified ranges and to promote the use of



1 best-management practices that can be implemented to limit  
2 environmental impacts associated with the operation of the  
3 ranges.

4  
5 Any owner of a sport shooting or training range must identify  
6 themselves to the department in accordance with department  
7 guidelines and provide, at a minimum, the name and legal  
8 address of the owner and the address and legal description of  
9 the range. Owners of ranges in existence on or before October  
10 1, 2004, must identify themselves to the department by  
11 September 30, 2005. Owners of ranges established after October  
12 1, 2004, must identify themselves to the department within 1  
13 year of the establishment of the ranges.

14 (i) Sport shooting or training ranges that have been  
15 identified to the department by September 30, 2005, may not be  
16 required to pay for the initial environmental cleanup,  
17 whenever it occurs, and the cost of the contamination  
18 assessment and the initial environmental cleanup shall be  
19 borne by the state. The cost of any subsequent cleanup will be  
20 done at the expense of the owner, operator, tenant, or  
21 occupant of the range. The cost of environmental cleanups  
22 conducted at ranges that have identified themselves to the  
23 department after September 30, 2005, shall be borne by the  
24 owner, operator, tenant, or occupant of the range. The  
25 liability protection in subsection (4) terminates after the  
26 initial environmental cleanup is completed by the department.

27 (j) A county, municipality, town, special purpose  
28 district, other political subdivision, or any other government  
29 entity in the state may not initiate any site investigation or  
30 any other activity related to environmental issues or cleanup  
31 of sport shooting or training ranges unless such activity is

1 specifically permitted by the Department of Environmental  
2 Protection and is under the direct supervision of the  
3 department.

4 (k) The department may use funds from the Water  
5 Quality Assurance Trust Fund for expenses associated with this  
6 act.

7 (l) This section does not relieve the state of its  
8 duty to absorb the costs of environmental cleanups of sport  
9 shooting or training ranges under other circumstances.

10 (m) The department may not initiate a range cleanup  
11 unless funding is available to complete the cleanup project.  
12 The department shall work with ranges to develop, with  
13 reasonable certainty, estimates of the time necessary to clean  
14 up each range and shall strictly adhere to a reasonable time  
15 frame, consistent with the principles of risk-based corrective  
16 action. Once a cleanup has begun, the department shall  
17 proceed, without delay until completion, utilizing the most  
18 fiscally responsible approach.

19 (8) PREEMPTION.--Notwithstanding any other provision  
20 of law, the Legislature preempts the entire field of  
21 regulating the environmental effects of projectile deposition  
22 at sport shooting and training ranges.

23 (9) CONSTRUCTION.--This section shall be liberally  
24 construed to effectuate its remedial and deterrent purposes.

25 Section 2. This act shall take effect upon becoming a  
26 law.

27  
28  
29  
30  
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 CS/SB 1156

- 4 1. Provides limited liability for, rather than blanket  
5 immunity from claims relating to the depositing of  
6 projectiles and their effect on the environment, to  
7 shooting ranges, and parties associated with the ranges,  
8 as identified to the Department of Environmental  
9 Regulation by September 30, 2005.
- 10 2. Changes the potential criminal penalty for bringing an  
11 action in violation of the bill from a third degree  
12 felony to a first degree misdemeanor. Provides that the  
13 criminal penalty may be imposed if any action pending as  
14 a January 1, 2004, is not withdrawn within 30 days of the  
15 bill becoming law.
- 16 3. Provides that no state agency or other political  
17 subdivision may benefit financially or otherwise from an  
18 action that is pending as of January 1, 2004, in which a  
19 judgment, legal action, or other recourse has been  
20 entered. The CS requires the agency or political  
21 subdivision to pay costs and fees associated with the  
22 litigation as well as damages, economic or otherwise that  
23 resulted from the litigation.
- 24 4. Deletes the potential for treble damages being available  
25 to a claimant injured as a result of a claim filed in  
26 violation of the newly-created statute. The potential  
27 claimants who may recover under this provision are  
28 limited to: any private or public owner, operator,  
29 employee, agent, contractor, customer, or user of a  
30 range.
- 31 5. The CS creates certain duties and methods by which they  
may be carried out, within the Department of  
Environmental Protection.
6. The CS provides that the Department may seek judicial  
intervention under certain circumstances, in order to  
carry out its duties, and that the prevailing party shall  
recover costs associated with the litigation.
7. The CS creates a duty to use risk-based corrective  
action, using the most fiscally responsible approach in  
the cleanup process.
8. The CS requires the Department to notify ranges when the  
Act passes.
9. The CS directs the Department to develop and implement 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 limited  
liability protection is lifted after the initial cleanup  
by the Department of Environmental Regulation.
10. The CS restricts governmental entities other than the  
state from initiating any activity related to

1 environmental issues, except under certain restricted  
2 circumstances.  
3 11. The CS provides that funds from the Water Quality  
4 Assurance Trust Fund may be used for expenses associated  
5 with this Act.  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31