HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 149 Sport Shooting and Training Range Liability Protection
SPONSOR(S): Baxley
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		Jaroslav	Havlicak
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill first makes the following legislative findings about sport shooting and training ranges ("ranges"):

- that over 400 ranges exist in the state;
- that they are widely used and enjoyed by the citizens of the state;
- that they "are a necessary component of the guarantees of the Second Amendment to the United States Constitution and of the Florida Constitution";
- that projectiles are integral to their operation;
- that there is no incontrovertible evidence that accumulation of spent projectiles at ranges poses a threat to the environment or to human health; and
- that defending environmental litigation by certain state agencies against ranges imposes prohibitive costs on those ranges which threaten the viability of the state's shooting and training range industry, which would unnecessarily impair the rights of the state's citizens to keep and bear arms.

This bill provides immunity to any "owner, operator, employee, agent, contractor, customer, lender, insurer, or user of any sport shooting or training range located in this state" from liability, "for any claim associated with the use, release, placement, deposition, or accumulation of any projectile in the environment…. until, if at all, such time as the Legislature convenes fact-finding tribunals and concludes that such remedies are supported by competent scientific evidence and are necessary."

This bill requires that all claims pending in any court or before any administrative agency on its effective date be withdrawn within 30 days, and provides for defendants in such pending cases to recover reasonable attorney's and paralegal fees and costs. Further, this bill provides for treble damages if an action is later filed in violation of its terms.

This bill provides that for an official, employee or other agent of a public entity to willfully and knowingly bring, or be a party to bringing, a suit in violation of this bill's provisions constitutes a third-degree felony.

Finally, this bill also provides that:

- the Legislature preempts the entire field of firearms and ammunition use at ranges;
- it is to be liberally construed; and
- it is severable such that the invalidity of any of its provisions does not affect the validity of the others.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[x]	No[]	N/A[]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[x]	No[]	N/A[]
4. Increase personal responsibility?	Yes[]	No[x]	N/A[]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

This bill may decrease personal responsibility because it provides immunity from liability.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The use, possession and sale of firearms are regulated in ch. 790, F.S. Since 1987, the Legislature has sought to give effect to a policy of making firearms laws uniform statewide: first by expressly preempting local ordinances on the subject;[1] and then, in 2001, by prohibiting lawsuits by the state, its agencies or its subdivisions ("public entities") premised on the lawful manufacture, distribution or sale of firearms.[2]

Current law does not restrict the ability of private parties to bring such suits, nor does it prevent public entities from bringing suit against the owners or operators of sport shooting and training ranges ("ranges"). Current law does, however, provide immunity to ranges from claims based on noise or noise pollution, so long as the range is in compliance with local noise-control ordinances in effect at the time of construction or initial operation of the range.[3]

The Department of Environmental Protection ("DEP") believes that "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."[4] DEP currently has three pending cases against ranges. They believe that 25 more are currently contaminated in excess of state standards; of these, they state that all but five are currently remediating this contamination on a voluntary basis.[5] DEP does not know if or how many other ranges may be facing environmental litigation brought by local governments or special districts.

The National Rifle Association ("NRA") believes that environmental litigation against ranges is a nationwide trend and, while large numbers of such suits may not yet have been filed in Florida, legislation such as this bill is necessary to prevent them from doing so and thereby imposing prohibitive defense costs on ranges.[6]

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[1] *See* s. 790.33, F.S.; chs. 88-183 and 87-23, L.O.F.
[2] *See* s. 790.331, F.S.; ch. 2001-38, L.O.F.
[3] *See* s. 823.16, F.S.
[4] Department of Environmental Protection Draft Bill Analysis (HB 149), Nov. 17, 2003, p. 3.
[5] Telephone conversation with Michael Sole, DEP Waste Management Division, Nov. 17, 2003.
[6] Telephone conversation with Marion Hammer, NRA/United Sportsmen of Florida, Nov. 17, 2003.

Proposed Changes

Findings

This bill states legislative findings that over 400 ranges exist in the state, that they are widely used and enjoyed by the citizens of the state, and that they "are a necessary component of the guarantees of the Second Amendment to the United States Constitution and of the Florida Constitution." The findings further state that many 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. Additionally, the bill provides a finding that projectiles are integral to the operation of ranges, and that there is no incontrovertible evidence that accumulation of spent projectiles at ranges poses a threat to the environment or human health. Finally, the bill also states a finding that defending environmental litigation by certain state and local agencies against ranges imposes prohibitive costs on those ranges which threaten the viability of the state's shooting and training range industry, which would unnecessarily impair the rights of the state's citizens to keep and bear arms.

Legislative Intent

This bill declares legislative intent to protect and immunize ranges and those associated with them from liability, and to prohibit actions by public entities that threaten to destroy or bankrupt ranges.

Immunity

This bill provides immunity to any "owner, operator, employee, agent, contractor, customer, lender, insurer, or user of any sport shooting or training range located in this state" from "liability to this state or any agency of the state, special purpose district, or political subdivision of this state, or to any other person or entity, for any claim associated with the use, release, placement, deposition, or accumulation of any projectile in the environment…." This immunity is extended to defendants in these specified cases "until, if at all, such time as the Legislature convenes fact-finding tribunals and concludes that such remedies are supported by competent scientific evidence and are necessary."

Pending Claims

This bill requires that all claims pending in any court or before any administrative agency on its effective date be withdrawn within 30 days, and provides for defendants in such pending cases to recover reasonable attorney's and paralegal fees and costs. On its face, this requirement is not limited to claims related to sport shooting and training ranges specifically or to firearms generally, but applies to every currently pending civil or administrative action in the state.

Future Claims

Further, this bill specifies that if an action is filed in violation of its terms, that action "shall be deemed frivolous per se, and the court shall award treble damages to the defendant, including all of the defendant's attorney's fees, costs, and expenses, compensation for loss of income, and expenses incurred as a result of such action."

This bill provides that for an official, employee or other agent of a public entity to willfully and knowingly bring, or be a party to bringing, a suit in violation of this bill's provisions constitutes a third-degree felony.

Additional Provisions

Finally, this bill also provides that:

- the Legislature preempts the entire field of firearms and ammunition use at sport shooting and training ranges;
- it shall be liberally construed to give effect to its remedial and deterrent purposes; and
- it shall be severable such that the invalidity of any of its provisions does not affect the validity of the others.

C. SECTION DIRECTORY:

Section 1. Creates s. 790.333, F.S., immunizing sport shooting and training ranges from civil liability.

Section 2. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By immunizing owners, operators and other associates of sport shooting and training ranges from liability, this bill may significantly reduce their costs of doing business, and possibly allow some ranges that would otherwise be bankrupted to remain in operation.

D. FISCAL COMMENTS:

Because this bill prevents public entities (both state and local) from bringing suit against ranges, it would reduce public revenues from such suits; however, it would also eliminate litigation expenditures on such suits. The net fiscal impact is uncertain.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to

raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Access to Courts

Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Because this bill immunizes ranges from liability, it is possible in some cases that it may violate this access to courts provision.

In *Kluger v. White*,[7] the Florida Supreme Court considered the Legislature's power to abolish causes of action. At issue in *Kluger* was a statute which abolished causes of action to recover for property damage caused by an automobile accident unless the damage exceeded $550.[8] The court determined that the statute violated the access to courts provision of the state constitution, holding that where a right to access the courts for redress for a particular injury predates the adoption of the access to courts provision in the 1968 state constitution, the Legislature cannot abolish the right without providing a reasonable alternative unless the Legislature can show (1) an overpowering public necessity to abolish the right and (2) no alternative method of meeting such public necessity.[9] Because the right to recover for property damage caused by auto accidents predated the 1968 adoption of the declaration of rights, the court held that the restriction on that cause of action violated the access to courts provision of the state constitution.

The court applied the *Kluger* test in *Smith v. Department of Insurance*.[10] In 1986, the Legislature passed comprehensive tort reform legislation that included a cap of $450,000 on noneconomic damages.[11] The cap on damages was challenged on the basis that it violated the access to courts provision of the state constitution. The Florida Supreme Court found that a right to sue for unlimited noneconomic damages existed at the time the constitution was adopted.[12] The *Smith* court held that the Legislature had not provided an alternative remedy or commensurate benefit in exchange for limited the right to recover damages and noted that the parties did not assert that an overwhelming public necessity existed.[13] Accordingly, the court held that the $450,000 cap on noneconomic damages violated the access to courts provision of the Florida Constitution.

By immunizing ranges against all claims, this bill may abolish causes of action which predate the adoption of the access to courts provision in the 1968 state constitution. Thus, at least in cases asserting a legal right established before that time, such as, for example, the common-law causes of action for negligence or nuisance, a litigant may argue that this bill violates the state constitution's guarantee of access to the courts. Applying the *Kluger* test, it does not appear that this bill provides any alternative remedy to bringing such suits, but simply extinguishes the causes of action they are premised on. Thus, whether a court would find that this bill violates the access to courts provision appears to hinge on whether the Legislature demonstrated both an overwhelming public necessity and an absence of any alternative means to address that necessity.

Due Process

Both the Fourteenth Amendment to the Constitution of the United States and Article I, section 9 of the Florida Constitution forbid the state from depriving a person of life, liberty or property without due

[7] 281 So. 2d 1 (Fla. 1973).
[8] *See* ch. 71-252, s. 9, L.O.F.
[9] *See Kluger* at 4.
[10] 507 So. 2d 1080 (Fla. 1987).
[11] *See* ch. 86-160, s. 59, L.O.F.
[12] *See Smith* at 1087.
[13] *See id.* at 1089.

process of law. Procedurally, this requires that a party be granted notice and an opportunity to be heard before any such deprivation.[14] A litigant might argue that this bill's requirement for plaintiffs to pay attorneys' fees and costs to defendants in pending suits that it requires to be withdrawn do not comport with due process since plaintiffs were not on notice of this possible deprivation when they filed suit.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- This bill's requirement for withdrawal of pending claims is not limited to its own subject matter, and thus could be read to require the withdrawal of every active case in the state. A simple amendment could provide the needed specificity to address this issue.

- Since one legislature cannot bind its successor, this bill's language about empowering fact-finding tribunals to determine the validity of particular claims probably would not require such tribunals to be created, nor would it require a future legislature to act upon any finding made by such a tribunal.

- The immunity provided by this bill encompasses suits other than environmental claims by public entities, including actions by private parties premised on negligence, nuisance, or intentional torts. This immunity is particularly sweeping due to the bill's broad definition of "environment," coupled with the phrase "any claim associated with the use, release, placement, deposition, or accumulation of any projectile in the environment." However, a reasonable construction would give effect to the term "environment" to recognize the bill limitations on environmental or pollution-type claims.

- This bill may encourage litigants to attempt pursuing federal rather than state-law claims against ranges. Although most federal environmental laws can only be enforced by federal agencies (usually either the Environmental Protection Agency or a component of the Department of the Interior such as the Forest Service or Fish & Wildlife Service) rather than by private parties directly, such enforcement is often initiated based on private complaints.

- Courts presume that statutes are severable,[15] so this bill's severability language may be unnecessary.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A

[14] *See Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Department of Administration*, 411 So.2d 184 (Fla. 1982).
[15] *See State v. Williams*, 343 So. 2d 35 (Fla. 1977). *See generally* 48A FLA. JUR. 2D STATUTES §§ 97 and 98.