

Committee Substitute for Committee Substitute for
Committee Substitute for Senate Bill No. 1156

An act relating to sport shooting and training range environmental liability protection; creating s. 790.333, F.S.; providing legislative findings and intent; providing definitions; directing the Department of Environmental Protection to provide information concerning best management practices to ranges and assist in implementation efforts; requiring ranges to implement best management practices; permitting the department to assist in contamination assessments at ranges; allowing the department to perform contamination assessments under certain circumstances; providing for the application of risk-based cleanup principles; specifying immunity from liability for certain persons or entities from certain claims relating to projectiles at sport shooting and training ranges; providing a limitation; requiring withdrawal of certain claims from courts or administrative agencies after a certain date; providing a civil cause of action to recover costs of litigation, attorney's fees, and other damages; providing criminal penalties; specifying preemption by the state; providing for construction; providing an effective date.

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

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

790.333 Sport shooting and training range protection; liability; claims, expenses, and fees; penalties; preemption; construction.—

(1) LEGISLATIVE FINDINGS:—

(a) The Legislature finds that in excess of 400 sport shooting and training ranges exist on public and private lands throughout this state.

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

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

(d) The public policy of the State of Florida is to encourage the safe handling and operation of firearms and mandates appropriate training in

the safe use and handling of firearms for persons licensed to carry concealed firearms and for persons licensed to hunt in the state. Sport shooting and training ranges throughout this state provide the location at which this important public purpose is served and at which the firearms training mandates are fulfilled.

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

(f) Over years of operation, projectiles have accumulated in the environment at many ranges. Whether this projectile accumulation has caused or will cause degradation of the environment or harm to human health depends on factors that are site-specific. Therefore, sport shooting and training ranges must be allowed flexibility to apply appropriate environmental management practices at ranges. The use of environmental management practices can be implemented to avoid or reduce any potential for adverse environmental impact.

(g) The Department of Environmental Protection, in collaboration with shooting range owners and operators, sports shooting organizations, law enforcement representatives, and university researchers, has developed shooting range best management practices in order to minimize any potential for any adverse environmental impact resulting from the operation of shooting ranges.

(h) Appropriate environmental management practices, when implemented where applicable, can minimize or eliminate environmental impacts associated with projectiles. Environmental management practices to maintain or to improve the condition of ranges is evolving and will continue to evolve.

(i) Unnecessary litigation and unnecessary regulation by governmental agencies of sport shooting and training ranges impairs the ability of residents of this state to ensure safe handling of firearms and to enjoy the recreational opportunities ranges provide. The cost of defending these actions is prohibitive and threatens to bankrupt and destroy the sport shooting and training range industry.

(j) The Department of Environmental Protection does not have nor has it ever had authority to force permitting requirements of part IV of chapter 403 on owners and operators of sport shooting and training ranges.

(k) The elimination of sport shooting ranges will unnecessarily impair the ability of residents of this state to exercise and practice their constitutional guarantees under the Second Amendment to the United States Constitution and under s. 8, Art 1 of the State Constitution.

(2) LEGISLATIVE INTENT.—The Legislature intends to protect public and private sport shooting or training range owners, operators, users, employees, agents, contractors, customers, lenders, and insurers from lawsuits and other legal actions by the state, special purpose districts, or political subdivisions and to promote maximum flexibility for implementation of environmental management practices and of the principles of risk-based cor-

rective action pursuant to s. 376.30701. It is also the intent of the Legislature that legal action against sport shooting and training ranges will only be a last-resort option and be available only to the department and only after all reasonable efforts to resolve disputes at shooting ranges, including compliance assistance, negotiations, and alternative dispute resolution have been attempted.

(3) DEFINITIONS.—As used in this act:

(a) “Department” means the Department of Environmental Protection.

(b) “Operator” means any person who operates or has operated a sport shooting or training range.

(c) “Owner” means any person who owns or has owned a sport shooting or training range or any interest therein.

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

(e) “Environmental management practices” includes but is not limited to Best Management Practices for Environmental Stewardship of Florida Shooting Ranges as developed by the Department of Environmental Protection. Such practices include, but are not limited to, control and containment of projectiles; prevention of the migration of projectiles and their constituents to ground and surface water; periodic removal and recycling of projectiles; and documentation of actions taken.

(f) “Environment” means the air, water, surface water, sediment, soil, and groundwater and other natural and man-made resources of this state.

(g) “User” means any person, partner, joint venture, business or social entity, or corporation, or any group of the foregoing, organized or united for a business, sport, or social purpose.

(h) “Sport shooting and training range” or “range” means any area that has been designed, or operated for the use of, firearms, rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, BB guns, airguns, or similar devices, or any other type of sport or training shooting.

(4) DUTIES.—

(a) No later than January 1, 2005, the department shall make a good faith effort to provide copies of the Best Management Practices for Environmental Stewardship of Florida Shooting Ranges to all owners or operators of sport shooting or training ranges. The department shall also provide technical assistance with implementing environmental management practices, which may include workshops, demonstrations, or other guidance, if any owner or operator of sport shooting or training ranges requests such assistance.

(b) No later than January 1, 2006, sport shooting or training range owners, operators, tenants, or occupants shall implement situation appropriate environmental management practices.

(c) If contamination is suspected or identified by any owner, operator, tenant, or occupant of sport shooting or training ranges, any owner, operator, tenant, or occupant of sport shooting or training ranges may request that the department assist with or perform contamination assessment, including, but not limited to, assistance preparing and presenting a plan to confirm the presence and extent of contamination.

(d) If contamination is suspected or identified by a third-party complaint or adjacent property sampling events, the department shall give 60 days' notice to the sport shooting or training range owner, operator, tenant, or occupant of the department's intent to enter the site for the purpose of investigating potential sources of contamination. The department may assist with or perform contamination assessment, including, but not limited to, assistance preparing and presenting a plan to confirm the presence and extent of contamination.

(e) If the department confirms contamination under paragraph (c) or paragraph (d), principles of risk-based corrective action pursuant to s. 376.30701 shall be applied to sport shooting or training ranges. Application of the minimum risk-based corrective action principles shall be the primary responsibility of the sport shooting range or training range owner or operator for implementation, however, the department may assist in these efforts. Risk-based corrective action plans used for these cleanups shall be based upon the presumption that the sport shooting or training range is an industrial use and not a residential use and will continue to be operated as a sport shooting or training range.

(5) SPORT SHOOTING AND TRAINING RANGE PROTECTION.—

(a) Notwithstanding any other provision of law, any public or private owner, operator, employee, agent, contractor, customer, lender, insurer, or user of any sport shooting or training range located in this state shall have immunity from lawsuits and other legal actions from the state and any of its agencies, special purpose districts, or political subdivisions for any claims of any kind associated with the use, release, placement, deposition, or accumulation of any projectile in the environment, on or under that sport shooting or training range, or any other property over which the range has an easement, leasehold, or other legal right of use, if the sport shooting or training range owner or operator has made a good faith effort to comply with subsection (4).

(b) Nothing in this act is intended to impair or diminish the private property rights of owners of property adjoining a sport shooting or training range.

(c) The sport shooting and training range protections provided by this act are supplemental to any other protections provided by general law.

(6) WITHDRAWALS OF CLAIMS AND RECOVERY OF EXPENSES AND ATTORNEYS FEES.—

(a) Within 90 days after the effective date of this act becoming law, all claims by the state and any of its agencies, special purpose districts, or political subdivisions against sport shooting or training ranges pending in any court of this state or before any administrative agency on January 1, 2004, shall be withdrawn. The termination of such cases shall have no effect on the defendant's cause of action for damages, reasonable attorney's fees, and costs.

(b) In any action filed in violation of this act after the effective date of this act, the defendant shall recover all expenses resulting from such action from the governmental body, person, or entity bringing such unlawful action.

(7) PENALTIES.—Any official, agent, or employee of a county, municipality, town, special purpose district, or other political subdivision or agent of the state, while he or she was acting in his or her official capacity and within the scope of his or her employment or office, who intentionally and maliciously violates the provisions of this section or is party to bringing an action in violation of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 and s. 775.083.

(8) PREEMPTION.—Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition use at sport shooting and training ranges, including the environmental effects of projectile deposition at sport shooting and training ranges.

(9) The provisions of this act shall supersede any conflicting provisions of chapter 376 or chapter 403.

(10) CONSTRUCTION.—This act shall be liberally construed to effectuate its remedial and deterrent purposes.

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

Approved by the Governor May 13, 2004.

Filed in Office Secretary of State May 13, 2004.