



Local & Federal Affairs Committee

Meeting Packet

**Wednesday, October 7, 2015
9:00 am – 11:00 am
Webster Hall (212 Knott)**

**Steve Crisafulli
Speaker**

**Dennis K. Baxley
Chair**



The Florida House of Representatives

Local & Federal Affairs Committee

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Speaker

Dennis K. Baxley
Chair

Meeting Agenda
Wednesday, October 7, 2015
Webster Hall (212 Knott)
09:00 a.m. – 11:00 a.m.

- I. Call to Order**

- II. Roll Call**

- III. Welcome and Opening Remarks**

- IV. Consideration of the Following Bill(s):**
 - HB 41 Discharge of Firearms on Residential Property by Combee and Rouson**

 - HM 69 Haitian Heritage Month by Watson, B.**

- V. Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 41 Discharge of Firearms on Residential Property
SPONSOR(S): Combee and Rouson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 130

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	White	White
2) Local & Federal Affairs Committee		Monroe <i>KDM</i>	Kiner <i>KLK</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, s. 790.15, F.S., provides that it is a first degree misdemeanor for a person to recklessly or negligently discharge a firearm outdoors on any property used primarily as the site of a dwelling or zoned exclusively for residential use.

The bill amends this section to also provide that it is a first degree misdemeanor for a person to recreationally discharge a firearm outdoors in an area that the person knows or reasonably should know is primarily residential in nature and that has a residential density of one or more dwelling units per acre. The bill specifies that "recreationally discharge" includes target shooting or celebratory shooting. The penalty does not apply:

- To a person lawfully defending life or property or performing official duties requiring the discharge of a firearm; or
- If, under the circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property.

The bill may result in a minor increase in the need for jail beds since it creates a new misdemeanor offense.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Recently, some individuals constructed “gun ranges” in the backyards of their homes.¹ Since some of these individuals live in densely populated residential neighborhoods, neighbors expressed safety concerns. Current Florida statutes do not clearly address the status of such “gun ranges” in residential neighborhoods. The legality of building and using such a range depends on a number of factors including:

- The circumstances surrounding the discharge of the firearm on the residential property, i.e., whether the discharge was reckless or negligent, and
- Whether the range may be deemed a “sport shooting range” subject to a local government regulation².

Currently, it is a first degree misdemeanor³ for any person to recklessly or negligently discharge a firearm⁴ outdoors on any property used primarily as the site of a dwelling⁵ or zoned exclusively for residential use.⁶ The penalty does not apply to a person:

- Lawfully defending life or property;
- Performing official duties requiring the discharge of a firearm; or
- Discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Florida Forest Service.⁷

Florida’s Standard Jury Instructions for Criminal Cases defines the term “recklessly” as “with a conscious and intentional indifference to consequences.”⁸ The term “negligently” is defined as “failing to use reasonable care under the circumstances.”⁹

Local government authority to regulate firearms and ammunition is restricted. The Legislature has preempted “the whole field of regulation of firearms and ammunition, including the purchase, sale,

¹ See, e.g., Charles Billi, “Backyard Gun Range Concerns St. Pete Neighbors,” 10NEWS. February 3, 2015. <http://www.wtsp.com/story/news/local/2015/02/02/man-builds-gun-range-in-his-yard-neighbors-concerned/22777421/> (last visited September 17, 2015), and Cammy Clark, “Fla. Law Allows Backyard Shooting Ranges,” Herald-Tribune, February 1, 2014, <http://www.heraldtribune.com/article/20140201/WIRE/140209997> (last visited September 17, 2015).

² Section 823.16(7), F.S.

³ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁴ Section 790.001(6), F.S., defines “firearm” as “any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.”

⁵ The term “dwelling” is defined to mean “... a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.” ss. 776.013(5)(a) and 790.15(1), F.S.

⁶ Section 790.15, F.S., also provides that it is a: (a) first degree misdemeanor to knowingly discharge a firearm in any public place or on the right-of-way of any paved public road, highway, or street and to knowingly discharge any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises; (b) a second degree felony or any occupant of any vehicle to knowingly and willfully discharge any firearm from the vehicle within 1,000 feet of any person; and (c) a third degree felony for any driver or owner of any vehicle, whether or not the owner of the vehicle is occupying the vehicle, who knowingly directs any other person to discharge any firearm from the vehicle.

⁷ Section 790.15(1), F.S.

⁸ FLA. STD. JURY INSTR. (Crim.) 10.6.

⁹ *Id.*

transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof.”¹⁰ With respect to shooting ranges, the Legislature has preempted local government regulation of firearms and ammunition use at a “sport shooting and training range,”¹¹ but has authorized local governments to regulate the location and construction of a “sport shooting range.”¹² The term “sport shooting range” is defined as “an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar type of sport shooting.”¹³ Whether this definition may be construed to authorize local regulation of residential areas where firearms are routinely discharged is unclear.

According to an Attorney General Opinion, the Legislature has indicated through statutorily codified intent language that a “sport shooting range,” is not merely any location where firearms are discharged. Therefore, a local government may not regulate the use of firearms anywhere simply by couching the regulation in terms of regulating a shooting range. The Attorney General wrote “... a county may not regulate the recreational discharge of firearms in residentially zoned areas when the discharge is not on a ‘shooting range,’ but merely recreational shooting on private property.”¹⁴

Effect of the Bill

The bill amends s. 790.15, F.S., to provide that it is a first degree misdemeanor for a person to recreationally discharge a firearm outdoors in an area that the person knows or reasonably should know is primarily residential in nature and that has a residential density of one or more dwelling units per acre. The bill specifies that “recreationally discharge” includes target shooting or celebratory shooting. The penalty does not apply:

- To a person lawfully defending life or property or performing official duties requiring the discharge of a firearm; or
- If, under the circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.15, F.S., relating to discharging a firearm in public or on residential property.

Section 2. Provides the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹⁰ s. 790.33(1), F.S.

¹¹ The term “sport shooting and training 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.” s. 790.33, F.S.

¹² s. 823.16(7), F.S.

¹³ s. 823.16(1)(c), F.S.

¹⁴ 11-17 Fla. Op. Att’y Gen. 1 (2011).

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may result in a minor increase in the need for jail beds since it creates a new misdemeanor offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill addresses persons who “recreationally” discharge a firearm. The modifying term “recreationally” is undefined by the bill. A review of current statutes shows the term is used in three other locations (in connection with fishing),¹⁵ but it is not defined in any of those statutes.¹⁶

As such, this term will be defined by the courts. A court may determine the meaning of the term “recreationally” by reference to a dictionary.¹⁷ According to the online Merriam-Webster Dictionary, the primary definition of the term “recreational” means “done for enjoyment.”¹⁸ The online Oxford Dictionary of US English provides “relating to or denoting activity done for enjoyment when one is not working” as its first definition of the term.¹⁹

The use of the term “recreationally” appears to imply that the discharge of the gun was done for a particular purpose. This may be interpreted by a court to preclude an accidental discharge from triggering the provisions of this statute.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁵ See, Sections 163.3177(6)(d)1.e., 379.353(2)(p), and 304.813(1)(g), F.S.

¹⁶ In reference to fishing, Rule 68B-24.002(12), F.A.C., does define a “recreational harvester” of fish as a person other than a commercial harvester. No other definition of “recreational” or “recreationally” has been found in the F.A.C.

¹⁷ *Rollins v. Pizzarelli*, 761 So.2d 294 (Fla. 2000).

¹⁸ Merriam-Webster Dictionary (September 17, 2015), <http://www.merriam-webster.com/dictionary/recreational>.

¹⁹ Oxford Dictionaries (September 17, 2015), http://www.oxforddictionaries.com/us/definition/american_english/recreational

1 A bill to be entitled
 2 An act relating to the discharge of firearms on
 3 residential property; amending s. 790.15, F.S.;
 4 prohibiting the recreational discharge of a firearm in
 5 certain residential areas; providing criminal
 6 penalties; providing exceptions; providing an
 7 effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Subsection (4) is added to section 790.15,
 12 Florida Statutes, to read:

13 790.15 Discharging firearm in public or on residential
 14 property.—

15 (4) A person who recreationally discharges a firearm
 16 outdoors, including for target shooting or celebratory shooting,
 17 in an area that the person knows or reasonably should know is
 18 primarily residential in nature and that has a residential
 19 density of one or more dwelling units per acre commits a
 20 misdemeanor of the first degree, punishable as provided in s.
 21 775.082 or s. 775.083. This subsection does not apply:

22 (a) To a person lawfully defending life or property or
 23 performing official duties requiring the discharge of a firearm;
 24 or

25 (b) If, under the circumstances, the discharge does not
 26 pose a reasonably foreseeable risk to life, safety, or property.

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27

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 41 (2016)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Local & Federal Affairs
2 Committee

3 Representative Combee offered the following:

4
5 **Amendment**
6 Remove lines 24-26 and insert:
7 (b) If, under the circumstances, the discharge does not pose
8 a reasonably foreseeable risk to life, safety, or property; or
9 (c) To a person who accidentally discharges a firearm.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 69 Haitian Heritage Month
SPONSOR(S): Watson and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee		Kiner <i>RUK</i>	Kiner <i>RUK</i>
2) State Affairs Committee			

SUMMARY ANALYSIS

Congress has passed legislation relating to national observances and commemorative months on several occasions. For example, Congress has passed legislation to commemorate or authorize the President to proclaim February as 'National African American History Month', November as 'American Indian Heritage Month', May as 'Jewish American Heritage Month', and the period beginning September 15 and ending October 15 as 'National Hispanic Heritage Month'.

House Memorial 69 urges Congress to recognize the month of May as 'Haitian Heritage Month'.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

This memorial does not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Located in the Caribbean on the western one-third of the island of Hispaniola, Haiti is a country of approximately 10 million people.¹ Due in part to Haiti's close proximity to the United States, there are approximately 1.5 million² people of Haitian descent living in this country – a large portion of whom reside in and around the city of Miami and the greater South Florida area.

The month of May is of great cultural significance to the people of Haiti and the Haitian diaspora, and as such, many events and celebrations are held during the month throughout the country. 'Haitian Flag Day', which is among Haiti's most celebrated holidays, is celebrated on May 18th. Toussaint L'Ouverture, one of the leaders of the Haitian Revolution, is reported to have been born on May 20, 1743.

In addition, various governmental entities in the United States have issued resolutions or proclamations recognizing May as 'Haitian Heritage Month', including, but not limited to, the following:

- In 2001, Miami-Dade County passed a resolution designated May as 'Haitian Cultural Heritage Month' and has held annual celebrations in the county ever since^{3,4};
- In 2003, the Palm Beach County School District issued a resolution recognizing May as 'Haitian Heritage Month'⁵;
- In 2015, the Governor of the Commonwealth of Massachusetts proclaimed the month of May 2015 to be 'Haitian Heritage Month'⁶;
- In 2015, the Mayor of the City of Boston and the City of Boston City Council issued separate proclamations to designate the month of May as 'Haitian Heritage Month' and to specifically honor 'Haitian Flag Day'⁷.

At the federal level, several resolutions have been introduced in the United States House of Representatives to recognize May as 'Haitian-American Heritage Month'. For example, House Resolution 777, sponsored by former Congressman Kendrick Meek, was introduced, but never heard, during the 109th Congress.⁸ Additionally, House Resolution 224, sponsored by Congresswoman Frederica Wilson, was introduced, but never heard, during the 113th Congress.⁹ Congress has passed legislation relating to national observances and commemorative months on several occasions. For example, Congress has passed legislation to commemorate or authorize the

¹ See Haiti's 'Country Profile' on the United States Central Intelligence Agency's World Factbook website at <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (Last viewed on 9/29/2015).

² U.S. Census Bureau, 2013 & 2014 American Community Survey.

³ See the text of County Resolution R-452-01 here

<http://www.miamidade.gov/govaction/matter.asp?matter=011622&file=false&yearFolder=Y2001> (Last viewed on 9/29/2015).

⁴ See Miami-Dade County's press release on the county's 15th Annual Haitian Cultural Heritage Month celebrations here <http://www.miamidade.gov/district02/releases/2015-04-24-haitian-month.asp> (Last viewed on 9/29/2015).

⁵ A copy of the resolution, dated April 23, 2003, is on file with the House of Representatives Local & Federal Affairs Committee.

⁶ See the 'Issued Proclamations' page of the Official Website of the Governor of Massachusetts here

<http://www.mass.gov/governor/constituent-services/recognition/issued-proclamations/haitian-heritage-month.html> (Last viewed on 9/29/2015).

⁷ A copy of each resolution is on file with the House of Representatives Local & Federal Affairs Committee.

⁸ See additional information on House Resolution 777 on the Congress.gov website here <https://www.congress.gov/bill/109th-congress/house-resolution/777?q=%7B%22search%22%3A%5B%22%5C%22hres777%5C%22%22%5D%7D&resultIndex=5> (Last viewed on 9/29/2015).

⁹ See additional information on House Resolution 224 on the Congress.gov website here <https://www.congress.gov/bill/113th-congress/house-resolution/224?q=%7B%22search%22%3A%5B%22%5C%22hres224%5C%22%22%5D%7D&resultIndex=2> (Last viewed on 9/29/2015).

President to proclaim February as 'National African American History Month', November as 'American Indian Heritage Month', May as 'Jewish American Heritage Month', and the period beginning September 15 and ending October 15 as 'National Hispanic Heritage Month'.¹⁰

Effect of the Memorial

This memorial urges Congress to recognize the month of May as "Haitian Heritage Month".

Copies of the memorial will be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

This memorial does not have a fiscal impact on state or local governments.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

¹⁰ See the Library of Congress's webpage on 'Commemorative Observances' on its website here <http://www.loc.gov/law/help/commemorative-observations/index.php> (Last viewed on 9/29/2015).

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

House Memorial

A memorial to the Congress of the United States,
 urging Congress to recognize the month of May as
 "Haitian Heritage Month."

WHEREAS, Haitian Heritage Month is held to salute the
 Haitian and Haitian-American communities and to exhibit
 appreciation for their culture and heritage which have
 immeasurably enriched the lives of the people of this nation,
 and

WHEREAS, as educators, authors, community leaders,
 activists, athletes, artists, musicians, and politicians,
 Haitian Americans have made their mark in every facet of society
 and have contributed to the betterment and diversity of this
 nation, and

WHEREAS, the close proximity of Haiti to American shores,
 in conjunction with our common bond of mutual values and
 commitment to democracy, ensures lasting comity of nations and
 continued trade and diplomatic relations, and

WHEREAS, an estimated 1.5 million persons of Haitian
 descent now live throughout this nation, and

WHEREAS, Congresswoman Frederica S. Wilson and Congressman
 Kendrick B. Meek, having acknowledged the importance of Haitian
 Americans in this nation's history and diversity, have proposed
 resolutions in the United States House of Representatives to

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26 | recognize the month of May as "Haitian-American Heritage Month"
27 | in the United States, NOW, THEREFORE,

28 |

29 | Be It Resolved by the Legislature of the State of Florida:

30 |

31 | That the Congress of the United States is urged to
32 | recognize the month of May as "Haitian Heritage Month" and to
33 | encourage the people of this nation to observe Haitian Heritage
34 | Month with appropriate ceremonies, celebrations, and activities.

35 | BE IT FURTHER RESOLVED that copies of this memorial be
36 | dispatched to the President of the United States, to the
37 | President of the United States Senate, to the Speaker of the
38 | United States House of Representatives, and to each member of
39 | the Florida delegation to the United States Congress.