

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 453 Micromobility Devices and Motorized Scooters
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Toledo
TIED BILLS: **IDEN./SIM. BILLS:** SB 542

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	14 Y, 0 N	Roth	Vickers
2) Local, Federal & Veterans Affairs Subcommittee	11 Y, 1 N, As CS	Darden	Miller
3) State Affairs Committee			

SUMMARY ANALYSIS

The “Florida Uniform Traffic Control Law” standardizes traffic regulation and enforcement across the counties and municipalities of the state. Unless expressly authorized, it is unlawful for any local government to pass or attempt to enforce any ordinance on a matter that is addressed by state traffic control laws. However, a county or municipality may regulate the operation of bicycles and enact an ordinance to permit, control, or regulate the operation of motorized scooters on sidewalks.

Bicycle and motorized scooter share programs allow users to rent and ride bicycles and motorized scooters on a short-term basis, for a fee, within designated geographical areas. Currently, local governments may contract with and regulate bicycle and motorized scooter share programs to the extent not otherwise prohibited by general law.

The bill creates a definition for “micromobility device”, and amends the definition of “motorized scooter.” The bill authorizes a county or municipality to regulate the operation of micromobility devices and for-hire motorized scooters as long as the regulation does not conflict with state or federal law and is not more restrictive than the county’s or municipality’s regulation of bicycles. Additionally, the bill authorizes a county or municipality to require companies offering micromobility devices or for-hire motorized scooters to be licensed.

The bill specifies that except as provided in statute, state and federal law exclusively controls regulation of micromobility devices and for-hire motorized scooters. Additionally, the bill authorizes micromobility devices and motorized scooters to drive on sidewalks and bicycle paths as long as bicycles are permitted to do so.

The bill requires that the operator of a micromobility device or motorized scooter have all the rights and duties applicable to the rider of a bicycle. Additionally, a micromobility device or motorized scooter is not required to be registered and insured like a motor vehicle; an operator does not have to have a valid driver license to operate a micromobility device or motorized scooter; and an operator may park a micromobility device or motorized scooter on a sidewalk as long as it does not impede pedestrian traffic.

Finally, the bill removes motorized scooters from the requirements for sale of miniature motorcycles, and clarifies that micromobility devices and motorized scooters are not required to display slow-moving vehicle emblems.

The bill has an indeterminate fiscal impact on local governments. See Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Uniform Traffic Control Law

The Legislature has enacted a wide array of traffic control laws in order to standardize traffic regulation and enforcement across the counties and municipalities of the state. This collection of laws is known as the “Florida Uniform Traffic Control Law” and is codified in Chapter 316, F.S. Unless expressly authorized, it is unlawful for any local government to pass or attempt to enforce any ordinance on a matter that is covered by state traffic control laws.¹

Bicycle Regulation

Section 316.003, F.S, defines a “bicycle” as:

Every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device. A person under the age of 16 may not operate or ride upon a motorized bicycle.²

Under state traffic control laws bicyclists are considered vehicle operators and are generally required to obey the same rules of the road as other vehicle operators, including traffic signs, signals, and lane markings.³ Section 316.2065, F.S., governs the operation of bicycles in Florida and provides for a number of bicycle-specific regulations, including:

- A bicycle rider or passenger who is under 16 years of age must wear a bicycle helmet.⁴
- A person may not knowingly rent or lease any bicycle to be ridden by a child who is under the age of 16 years unless:
 - The child possesses a bicycle helmet; or
 - The lessor provides a bicycle helmet for the child to wear.⁵
- Every bicycle in use between sunset and sunrise shall be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear each exhibiting a red light visible from a distance of 600 feet to the rear.⁶
- A person operating a bicycle on a sidewalk, or across a roadway on a crosswalk, must yield the right-of-way to any pedestrian and must give an audible signal before overtaking and passing the pedestrian.⁷

¹ Ss. 316.002, 316.007, F.S.

² S. 316.003(4), F.S.

³ S. 316.2065(1), F.S.

⁴ S. 316.2065(3)(d), F.S.

⁵ S. 316.2065(15)(a), F.S.

⁶ S. 316.2065(7), F.S.

⁷ S. 316.2065(10), F.S.

A person operating a bicycle on a roadway must ride in the bicycle lane, but if there is no bicycle lane, the bicycle operator must ride as close to the right-hand curb as practicable. However, a bicycle operator may move to the center of the lane when:

- Overtaking and passing another bicycle or vehicle proceeding in the same direction;
- Preparing for a left turn at an intersection or into a private road or driveway; or
- Reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane.⁸

A substandard width lane is any lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.⁹ Bicycle operators operating a bicycle on a one-way highway with two or more marked traffic lanes may ride as near to the left-hand curb as practicable¹⁰ and bicycle operators may not ride more than two abreast on a roadway.¹¹

Local Traffic Control Authority

State traffic control laws allow local authorities to exercise some discretion over matters relating to bicycle safety and operation. Section 316.008, F.S., “Powers of local authorities,” grants local authorities with a reasonable exercise of police power to regulate a number of traffic-related activities within their jurisdictions, including:

- The operation of bicycles;
- Restricting the use of streets;
- Establishing speed limits for vehicles in public parks;
- Regulating or prohibiting stopping, standing, or parking;
- Prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;
- Regulating, restricting, or monitoring traffic by security devices or personnel on public streets and highway;
- Designating and regulating traffic on play streets;
- Regulating, restricting, or prohibiting traffic within the boundary of any airport owned by the state, a county, a municipality, or a political subdivision; and
- Adopting and enforcing such temporary or experimental regulations as may be necessary to cover emergencies or special conditions.

A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, and electric personal assistive mobility devices on sidewalks or sidewalk areas, under certain conditions.¹² Local authorities, in conjunction with the Department of Transportation, are authorized to determine when overtaking and passing or driving to the left of the roadway would be especially hazardous and may require signs and markings to be placed to designate a no-passing zone.¹³

Bicycle and motorized scooter share programs are not regulated by the state; therefore, local governments may contract with and regulate the share programs to the extent not otherwise prohibited by general law.¹⁴ Local governments in Florida, and across the country, have entered into public-private partnerships with bicycle and motorized scooter share programs to facilitate the share programs in their jurisdiction.

⁸ S. 316.2065(5)(a), F.S.

⁹ *Id.*

¹⁰ S. 316.2065(5)(b), F.S.

¹¹ S. 316.2065(6), F.S.

¹² S. 316.008(7)(a), F.S.

¹³ S. 316.0875, F.S.

¹⁴ See art. VIII, ss. 1(f), 1(g), 2(b), Fla. Const.

Share Programs

Bicycle and motorized scooter share programs allow users to rent and ride bicycles and motorized scooters on a short-term basis, for a fee, within designated geographical areas.

Docked Bicycle Share Programs

Companies offering “docked” bicycles require their bicycles to be rented from and returned to designated, unmanned docking stations.¹⁵ Some jurisdictions require that the bicycle share program acquire a permit for operations and pay a rental fee for the docking stations.

Rental options vary by program, but generally allow some combination of a single use rate for a flat fee, or a weekly, monthly, or annual subscription allowing the member to rent a bicycle for either an unlimited number of rides or a certain number of minutes per day during the subscription period.¹⁶

Dockless Bicycle Share Programs

Companies offering “dockless” bicycles do not have stations located at fixed positions from where their bicycles must be rented and returned. The operator unlocks the bicycle using information provided by or transmitted from the program’s mobile application on their mobile phone, and the bicycle is used according to the terms of the program agreement. The program agreement may require the operator to sign a waiver of liability prior to using the bicycle.¹⁷

The absence of designated bicycle racks, stations, or hubs to dock the bicycles when not in use distinguishes the dockless bicycle sharing model from the docked bicycle sharing models. Dockless bicycle share programs may require a smaller initial capital investment due to not having to set up expensive stations, and sometimes do not require that rental fees be paid to the local government.

Advocates of the dockless bicycle share model see dockless bicycles as a way for private industry to provide alternative transportation options with little or no up-front investment by local government. Opponents of the dockless bicycle model highlight that, because the bicycles are not locked to anything, there is the potential for bicycles to be left in inconvenient places such as in the middle of the sidewalk, blocking curb ramps and other ADA-sensitive locations, businesses, and transit access points. Additionally, some cities have experienced problems with bicycles being thrown into bodies of water, stranded in trees, on rooftops, and other undesirable places.¹⁸

Motorized Scooter Share Programs

In many of the business models, riders can use the motorized scooter share program’s app to locate and reserve a motorized scooter for a fee (typically \$1) plus a per-minute fare. Within the app, the rider can see the motorized scooters available in the surrounding area, as well as the battery charge and range of miles available on the motorized scooter. Once the motorized scooter is located, the rider can capture a barcode located on the motorized scooter via a cell phone camera to reserve and start the

¹⁵ See, e.g., Citibike, *How it Works*, <http://citibikemiami.com/how-it-works> (last visited Feb. 20, 2019).

¹⁶ See, e.g., Broward B-cycle, <https://broward.bcycle.com/>; Juice Orlando Bike Share, <https://juicebikeshare.com/#about> (last visited Feb. 20, 2019).

¹⁷ See, e.g., Lime, <https://www.li.me/> (last visited Feb. 20, 2019).

¹⁸ Josh Cohen, *Seattle Test Will Lead to Regulating Dockless Bike-Share*, NEXT CITY (Dec. 21, 2017), available at <https://nextcity.org/daily/entry/seattle-dockless-bikeshare-pilot-regulation> (last visited Feb. 20, 2019).

ride. The rider will end his or her ride by parking the motorized scooter and selecting to end the ride on the app. The rider will receive a summary of the ride with the total amount of the fare.¹⁹

These motorized scooters are dockless, and riders are able to leave the motorized scooters in a location of their choosing when they end their rides.²⁰ The parking of motorized scooters has resulted in concerns including:

- Crowding and obstruction of sidewalks for pedestrians;
- Restricting the use of sidewalks for people with disabilities; and
- Motorized scooters being left in the travel lanes of roadways.²¹

Home Rule and Preemption

Counties

A charter county has all powers of self-government not inconsistent with general law or special law approved by the voters.²² A county without a charter has such power of self-government as provided by general²³ or special law, and may enact county ordinances not inconsistent with general law.²⁴ General law authorizes counties “the power to carry on county government”²⁵ and to “perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.”²⁶

Municipalities

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,²⁷ acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.²⁸ Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.²⁹

Section 166.221, F.S., authorizes municipalities to levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.³⁰ Florida law recognizes two types of preemption: express and implied. Express preemption requires a

¹⁹ American Association of Motor Vehicle Administrators, *Electric Dockless Scooters Whitepaper*, 2019, at 3 .

²⁰ *Id.*

²¹ *Id.* at 4.

²² Art. VIII, s. 1(g), Fla. Const.

²³ Ch. 125, Part I, F.S.

²⁴ Art. VIII, § 1(f), Fla. Const.

²⁵ S. 125.01(1), F.S.

²⁶ S. 125.01(1)(w), F.S.

²⁷ S. 166.011, F.S.

²⁸ State Affairs Committee, *The Local Government Formation Manual 2018-2020*, at 16, available at <https://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited February 22, 2019).

²⁹ S. 166.021(4), F.S.

³⁰ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

specific legislative statement; it cannot be implied or inferred.³¹ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.³² Legislative intent is clearly discernable where the Legislature expressly or specifically preempts an area.³³ In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.³⁴

Proposed Changes

The bill amends s. 316.003, F.S., by creating a definition for “micromobility device” and amending the definition of “motorized scooter”. Micromobility device is defined as, “any motorized transportation device made available for private use by reservation through an online application, website, or software for point-to-point trips, which is incapable of traveling at speeds greater than 20 miles per hour on level ground when powered solely by the motor. This term includes motorized scooters and motorized bicycles as defined in this section.” The definition of “motorized scooter” is amended to include micromobility devices, changing the definition of a motorized scooter from a vehicle that is not capable of propelling at greater than 30 miles per hour to 20 miles per hour on level ground when powered solely by the motor, and broadens the definition to include vehicles with or without a seat or saddle.

The bill amends s. 316.008, F.S., by authorizing a county or municipality to regulate the operation of micromobility devices and for-hire motorized scooters as long as the regulation does not conflict with statute or federal law and is not more restrictive than the county’s or municipality’s regulation of bicycles.

Additionally, the bill authorizes a county or municipality to require companies offering micromobility devices or for-hire motorized scooters to be licensed. The license must be granted if the applicant provides:

- Proof of commercial general liability insurance coverage with a limit of at least \$1 million per occurrence with a \$2 million aggregate limit; and
- Workers’ compensation insurance that meets minimum requirements under state law.

The bill provides that counties and municipalities may designate locations where the operators of micromobility devices and for-hire motorized scooters may not stage shared devices, provided that at least one location is available for staging on each side of each city block in commercial and business districts.

The bill specifies that, regulation of micromobility devices and for-hire motorized scooters, except as provided in s. 316.008, F.S., is exclusively controlled by state and federal law.

The bill amends s. 316.1995, F.S., to authorize micromobility devices and motorized scooters to drive on sidewalks and bicycle paths provided bicycles are permitted to do so.

The bill amends s. 316.2128, F.S., to provide that the operator of a micromobility device or motorized scooter has all the rights and duties applicable to the rider of a bicycle. Additionally, a micromobility device or motorized scooter is not required to be registered and insured like a motor vehicle; an operator does not have to have a valid driver license to operate a micromobility device or motorized scooter; and an operator may park a micromobility device or motorized scooter on a sidewalk as long as it does not impede pedestrian traffic.

³¹ See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

³² *Mulligan*, 934 So. 2d at 1243.

³³ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

³⁴ See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

The bill requires a person offering micromobility devices and for-hire motorized scooters to secure all of the devices the person offers within any area of the state subject to a tropical storm or hurricane warning issued by the National Weather Service.

The bill removes the requirement that commercial sellers of motorized scooters display and provide notice that motorized scooters may not be operated on public roads, may not be registered as motor vehicles, and may not be operated on sidewalks unless pursuant to local ordinance.

The bill amends s. 316.2225, F.S., clarifying that micromobility devices and motorized scooters are not required to display slow-moving vehicle emblems.

The bill also makes conforming changes.

B. SECTION DIRECTORY:

Section 1: Amends s. 316.003, F.S., relating to definitions.

Section 2: Amends s. 316.008, F.S., relating to powers of local authorities.

Section 3: Amends s. 316.1995, F.S., relating to driving upon sidewalk or bicycle path.

Section 4: Amends s. 316.2128, F.S., relating to operation of motorized scooters and miniature motorcycles; requirements for sale.

Section 5: Amends s. 316.2225, F.S., relating to additional equipment required on certain vehicles.

Section 6: Amends s. 655.960, F.S., relating to definitions.

Section 7: The act shall take effect upon becoming a law.

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:

Counties and municipalities may see an indeterminate positive fiscal impact from the licensure fees collected from companies offering micromobility devices and for-hire motorized scooters.

2. Expenditures:

Counties and municipalities may see an indeterminate negative fiscal impact associated with resources needed to regulate the operation of micromobility devices and for-hire motorized scooters.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Access to micromobility devices and motorized scooters may increase.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Transportation notes the bill allows micromobility devices and motorized scooters to drive upon sidewalks and bicycle paths. This may impact pedestrian and bicycle safety due to the additional weight, speed differential, and momentum kinetic energy imposed by these vehicles.³⁵ Similarly, the bill allows for parking a micromobility device or motorized scooter on a sidewalk in a manner that does not impede normal pedestrian movement. However, leaving these vehicles on the sidewalk unattended may be problematic for pedestrians, particularly those that are visually impaired or wheelchair bound.³⁶

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies that the speed limit for a micromobility device or motorized scooter refers to the speed when powered solely by the motor;
- Authorizes counties and municipalities to designate locations where operators of micromobility devices and motorized scooters may not stage shared devices, as long as at least one location on each side of each city block in commercial and business districts is available for staging;
- Reduces the minimum aggregate limit of required commercial general liability insurance coverage from \$5 million to \$2 million; and
- Requires persons offering micromobility devices and motorized scooters for hire to secure their devices in any area of the state subject to a tropical storm or hurricane warning issued by the National Weather Service.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.

³⁵ Department of Transportation, Agency Analysis of House Bill 453, p. 5, (Jan. 22, 2019).

³⁶ *Id.*