

STORAGE NAME: h4221s1a.ft

DATE: April 15, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 4221

RELATING TO: Amusement Rides

SPONSOR(S): Committee on Agriculture and Representative Ziebarth

COMPANION BILL(S): CS/SB 1460 (s) Senator Forman

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE YEAS 8 NAYS 0
 - (2) FINANCE AND TAXATION YEAS 13 NAYS 0
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The Department of Agriculture and Consumer Services (department) administers the Amusement Device Safety Inspection Program (program) to ensure that fair rides and other attractions are safe for public use.

CS/HB 4221 is a substantial revision of section 616.242, F.S., relating to public fairs and expositions. The bill removes obsolete language and reorganizes the remaining language under subject headings. The bill also makes the following substantive changes:

- enhances safety standards for amusement rides,
- strengthens requirements for nondestructive testing of amusement rides,
- changes accident reporting requirements,
- augments the department's ability to investigate accidents and to impound unsafe amusement rides, and
- allows the department to attach liens against amusement ride owners with outstanding monies due the department.

The bill also amends sections 212.08, 570.46, and 616.13, F.S., to delete obsolete language and to modify the phrase "amusement devices and amusement attractions" to "amusement rides."

This bill has a positive insignificant fiscal impact to the General Revenue Fund and the General Inspection Trust Fund (GITF).

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Amusement Device Safety Inspection Program (program), administered by the Department of Agriculture and Consumer Services (department), was established in 1963 (Ch. 63-247, Laws of Florida), when the Legislature authorized the department to inspect "midway companies." The department conducted limited inspections to assess the companies' operational and electrical safety and compliance with fire prevention requirements. The 1983 Legislature expanded the department's authority (Ch. 83-239, Laws of Florida) by giving it, or its designee, the responsibility to inspect amusement devices. However, due to limited manpower, the department's inspection activities continued to be marginal. In 1986, the Legislature increased the program's appropriations and staffing. In 1989, after a fatal accident at a public fair in south Florida, the Legislature specified that the department was to inspect and test all devices operating in the state.

Current law provides for all amusement rides operating in Florida to obtain an annual permit from the department. To obtain a permit, the owner's rides must be:

- assembled, disassembled, maintained and operated in such a fashion as to prevent injuries;
- covered by a bond or insurance policy of at least \$1 million to cover potential accident liability; and
- inspected annually by a specified professional.

The department presently employs 12 inspectors who travel throughout the state to examine rides at sites such as public fairs. During inspections, the inspectors examine the physical condition of the rides to determine that they:

- are appropriately assembled,
- are free of structural cracks and other defects that might pose a safety hazard,
- are operated in accordance with the manufacturer's specifications, and
- meet statutory requirements.

The inspectors also check to make sure the owners have obtained the required annual inspections and insurance coverage for their rides and have conducted the required daily inspections of the rides.

Current law exempts from state inspection, facilities located at permanent sites employing at least 1,000 full-time employees and maintaining qualified full-time in-house safety inspectors approved by the department. These facilities must provide an annual affidavit stating that all rides and facilities have been inspected and tested as required. As of January 1998, three permanent facilities (Disney World, Bush Gardens, and Universal Studios) met these requirements and were exempt from state inspection.

The department is authorized to levy several types of sanctions if amusement ride owners fail to comply with program requirements. If the department determines that an amusement ride presents an immediate danger, it may issue a "stop operation" order, prohibiting the owner from operating the ride until the defect has been corrected and the

department rescinds the order. The department may also revoke the operating permit or impose an administrative fine of up to \$500 per day per violation if an amusement ride is operated:

- without the required inspections or insurance,
- with a defect that poses a serious injury risk to the public,
- after being involved in an accident resulting in death or serious injury, or
- if owners fail to correct specified violations within 30 days after receiving a written notice of noncompliance.

During fiscal year 1996-97, the department issued 162 "stop operation" orders for various violations. The department imposed \$5,000 in administrative fines against amusement ride owners but did not revoke any operating permits during the year.

The department's fees for annual operating permits range from \$170 to \$500, based on the type of amusement ride. The annual inspection fees for temporary amusement rides range from \$31 to \$62 per ride each time the ride is set up and inspected. The department is also authorized to assess various fees for infractions.

Though required by law, the program has not been self-supporting through fee revenues. In fiscal year 1996-97, program expenditures were approximately \$1,119,506. Only \$317,727 (28%) of this amount was recovered through fees, with the remaining costs paid by General Revenue or revenues from other department programs deposited into the General Inspection Trust Fund. Inspection fees were increased, by rule, in the present fiscal year. By fiscal year 1998-99, the inspection fees generated by the program will cover 100 percent of the program costs.

B. EFFECT OF PROPOSED CHANGES:

Section 1: Committee Substitute for House Bill 4221 is a reorganization of the current text in s. 616.242, F.S. It also includes some new requirements relating to amusement rides.

Adoption of Standards and Rules

The bill requires the department to adopt, by rule, amusement ride standards which are the same or similar to specified national standards. It authorizes the department to adopt the rules necessary to carry out its statutory duties in the interest of public health, safety, and welfare and to promote patron safety in the design, construction, assembly, disassembly, maintenance, and operation of amusement rides. It requires the department to adopt rules regulating the safe use and operation of go-karts, amusement rides at water parks, and bungee operations. It authorizes the department to adopt rules to address circumstances that may arise following an accident or unforeseen event.

Annual Permit

The bill prohibits an amusement ride from being operated without a current annual permit. It requires an owner to submit a permit application providing specified information. The bill provides an annual permit is valid for one year from the date of issue and is non-transferable. It requires the annual permit to be displayed on the amusement ride in a place visible to patrons. It specifies that each go-kart track at the same permanent facility is considered a separate amusement ride. However,

amusement rides at water parks which operate from the same deck or level are considered one amusement ride.

Nondestructive Testing, Affidavit, and Exemptions

The bill prohibits the operation of an amusement ride unless the owner has a current affidavit of nondestructive testing from a professional engineer or qualified inspector stating the amusement ride has undergone nondestructive testing for metal fatigue at least annually. It strengthens the requirements for nondestructive testing. An affidavit for nondestructive testing must state specified information.

Nondestructive testing is not required for fun houses, houses of mirrors, haunted houses, mazes, wave pools, wave-making devices, kiddie pools, slides that are fully supported by an earthen mound, nonmotorized playground equipment that requires a manager, or lazy-river type nonmotorized floating carriers propelled by water.

Department Inspections

The bill requires an amusement ride to be inspected by the department and issued an inspection certificate before an annual permit can be obtained. It requires each permanent amusement ride to be inspected semi-annually by the department and issued an inspection certificate. It requires each temporary amusement ride to be inspected by the department and issued an inspection certificate each time the ride is set up or moved to a new location except under specified conditions.

The bill provides criteria for obtaining a department inspection for an amusement ride. It authorizes an owner to request reinspection if an amusement ride does not pass inspection. It provides that an inspection certificate will be issued if the amusement ride passes inspection and the owner pays the applicable fee. It provides criteria for the inspection certificate. It requires the inspection certificate to be displayed on the amusement ride in a readily visible location. It authorizes the department to charge a fee if the owner:

- fails to cancel a Request for Inspection in a timely fashion,
- requests a holiday or weekend inspection, or
- is required to have a replacement United States Amusement Identification (USAID) plate issued.

Fees

The bill requires the department to adopt rules establishing fees that cover 100 percent of all costs and expenditures associated with the Bureau of Fair Rides Inspection. It prohibits any owner who has not paid all fees or who has any unpaid fines from operating any amusement ride until the fees and fines have been paid.

Insurance Requirements

The bill prohibits an owner from operating an amusement ride unless insurance is in effect at all times. The insurance may be:

- an insurance policy in an amount of not less than \$1 million per occurrence, \$1 million in the aggregate, which insures the owner of the amusement ride against liability for injury to persons arising out of the use of the amusement ride; or
- a bond in a like amount; however, the aggregate liability of the surety under the bond may not exceed the face amount.

Exemptions

The bill provides exemptions from the provisions of the bill for specified amusement rides.

Inspection Standards

The bill provides for the following inspection standards for amusement rides:

- All mechanical, structural, and electrical components that affect patron safety must be in good working order.
- All control devices, speed-limiting devices, brakes, and safety equipment designated by the manufacturer must be in good working order.
- Parts must be properly aligned, and may not be bent, distorted, cut or otherwise injured to force a fit. Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed where required for safe operation.
- Before being used by the public, an amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means to provide stability.
- Areas in which patrons may be endangered by operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.
- Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.
- An amusement ride powered so as to be capable of exceeding its maximum safe operating must be provided with a maximum-speed-limiting device.
- The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be smooth and rounded and free from sharp, rough, or splintered edges and corners, with no projecting studs, bolts, screws, or other projections which might cause injury.
- All amusement rides must comply with this section and all rules adopted hereunder.

Major Modifications

The bill requires a professional engineer to certify that an amusement ride is in compliance after the ride has undergone a major modification.

Entry for Inspection or Investigation

The bill authorizes an employee of the department to enter, unannounced, after presenting identification, to inspect amusement rides at any time and in a reasonable manner.

Reporting and Investigation of Accidents and Defects; Impoundments

The bill requires an owner or manager to report any accident for which a patron is transported to a hospital to the department by telephone or facsimile within four hours after the occurrence of the accident. A written report must be filed with the department within 24 hours after the accident. The bill requires any mechanical, structural, or electrical defects affecting patron safety that cause an amusement ride to be closed for more than four hours to be reported to the department by telephone or facsimile within eight hours after the closing of the ride. A written report must be filed within 24 hours after the closing. The bill requires each permanent facility to file with the department a written report each year of the number of times, during the previous calendar year, an amusement ride was closed for patron use for a period of time in excess of four hours and to report any accident in which the patron was transported to a hospital during the

previous calendar year. It authorizes the department to impound an amusement ride involved in an accident for which a patron is transported to a hospital or which has a mechanical, structural, or electrical defect affecting patron safety. It authorizes the impoundment of similar amusement rides. It authorizes all necessary tests to be performed, and the cost of impoundment and performing the necessary tests to be borne by the owner of the amusement ride.

Inspection by Owner or Manager

The bill requires an owner or manager to inspect and test amusement rides prior to opening on each day of operation and prior to any inspection by the department to ensure compliance with all requirements. Criteria are provided for recording each inspection.

Training of Employees

The bill requires the owner or manager of any amusement ride to maintain a record of employee training for each employee authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride. It requires the training record to be kept on site and made immediately available to the department upon request. It prohibits training from being conducted when an amusement ride is open to the public unless the training is conducted under the supervision of an employee who is trained in the operation of that ride. It requires the owner or manager to certify that each employee is trained on the amusement ride for which the employee is responsible.

Prohibitions Related to Bungy Operations

The bill prohibits the following bungy operations:

- a bungy operation conducted with balloons, blimps, helicopters, or other aircraft;
- sand bagging;
- sandem or multiple bungy jumping; and
- bungy jumping from any bridge, overpass, or any other structure not specifically designed as an amusement ride.

Immediate Final Orders

The bill prohibits an amusement ride that is deemed to be a serious danger, that has been issued an immediate final order, from being operated for patron use until it has passed a subsequent inspection or at the direction of the department. It provides that an amusement ride of a similar make and model may be considered an immediate serious danger to the public health, safety, and welfare, and upon issuance of an immediate final order prohibiting patron use of the ride, may not be operated for patron use until it has passed a subsequent inspection.

Enforcement and Penalties

The bill authorizes the department to deny, suspend for a period not to exceed one year, or revoke any permit or inspection certificate. It authorizes the department to impose an administrative fine of up to \$5,000 per violation, per day, against the owner of an amusement ride if it finds the ride has operated or is operating in specified unsafe conditions. It requires the department to specify the period during which a suspension is effective in its order suspending a permit or inspection certificate. It specifies that the suspension period may not exceed one year.

The bill prohibits the owner of an amusement ride that has had its permit or inspection certificate revoked from applying for another permit or inspection certificate within two

years after the date of such revocation. If judicial review of such revocation is sought, the owner may not apply within two years after the date of the final court order or decree affirming the revocation.

The bill prohibits an owner from operating an amusement ride during the period of suspension or revocation of a permit or inspection certificate. It allows an owner to reapply for a new permit or inspection certificate when a suspension period has expired. It authorizes the department to bring an action to enjoin the violation of any provision of this section, or rules adopted under this section, in the circuit court of the county in which the violation occurs or is about to occur. It requires the court to immediately issue the temporary or permanent injunction of the violation or threatened violation, upon competent and substantial evidence presented by the department. It requires the injunction to be issued without bond.

The bill authorizes the department to issue a letter of warning to the owner of an amusement ride specifying the violation and directing the owner to immediately correct the violation. It provides penalties for persons who knowingly violate any provision of the section.

Liens

The bill authorizes the department to file a lien against the owner of an amusement ride(s) for fees, fines, interest, and costs levied but not paid. The lien shall arise as of the time the fees, fines, interest, and costs become due and payable and shall cover all real and personal property owned by the owner from the date the lien arises until paid. The lien may be recorded in the public records of any county where the owner owns real or personal property and shall state the name of the owner and the amount due. It allows the department to enforce the lien upon real property in the manner in which a mortgage of real property is foreclosed. The enforcement against personal property may be handled in the manner provided for the enforcement of other liens on personal property in this state. Enforcement of a lien for fees, fines, interests, and costs shall not operate as a waiver of any other remedies available to the department, including an action to recover a money judgement for the unpaid monies, or enforcement of the lien provided.

The bill authorizes the department to have special liens on all amusement rides owned by the owner. The special lien shall arise as of the time the fees, fines, interest, and costs become due and payable and shall cover all amusement rides owned by the owner from the date the lien arises until paid. The lien shall secure all monies which are due and which may accrue prior to the enforcement of the lien.

The bill authorizes the department to provide notice of a claim of lien to potential buyers by tagging all amusement rides owned by the owner as being subject to a lien or by mailing a copy of a claim of the lien, stating specified information.

The special lien on all amusement rides owned by the owner may be enforced in the same manner as provided for enforcement of liens on personal property in this state. The lien shall also extend to the proceeds of a sale of any amusement ride owned by the owner to a buyer. If a buyer has not received written notice of the lien and the amusement rides are not tagged, then such buyer takes free of the lien.

Section 2: Amends s. 212.08, F.S., changing the phrase “amusement devices and amusement attractions” to “amusement rides.”

Section 3: Amends s. 570.46, F.S., deleting obsolete language and changing the term “amusement device” to “amusement rides.”

Section 4: Amends s. 616.13, F.S., changing the phrase “amusement devices and amusement attractions” to “amusement rides.”

Section 5: Provides an effective date of October 1, 1998.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced: **Not applicable.**

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not Applicable.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment: **Not applicable.**

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

b. Does the bill directly affect the legal rights and obligations between family members?

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. STATUTE(S) AFFECTED:

Sections 212.08, 570.46, 616.13, and 616.242, F.S.

E. SECTION-BY-SECTION RESEARCH:

Please see Section B (Effect of Proposed Changes) for a section by section review.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

	<u>Amount</u> <u>FY 98-99</u>	<u>Amount</u> <u>FY 99-00</u>	<u>Amount</u> <u>FY 00-01</u>
Operating Costs			
Recurring Costs	\$ -0-	\$ -0-	\$ -0-
Anticipated Recurring Revenues (GITF)	<u>37,350</u>	<u>37,350</u>	<u>37,350</u>
Total Costs	-0-	-0-	-0-
Total Revenues (GITF)	<u>\$37,350</u>	<u>\$37,350</u>	<u>\$37,350</u>
Non-Operating Costs			
General Revenue Service Charge (GITF)	\$ 2,727	\$ 2,727	\$ 2,727
Total Non-Operating Costs	<u>2,727</u>	<u>2,727</u>	<u>2,727</u>

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Grand Total of Costs	(2,727)	(2,727)	(2,727)
Grand Total of Revenues	<u>37,350</u>	<u>37,350</u>	<u>37,350</u>
Grand Total	<u>\$34,623</u>	<u>\$34,623</u>	<u>\$34,623</u>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Permanent amusement rides will be inspected twice yearly in lieu of an annual inspection under present law. In FY 98-99, inspection fees per amusement ride will be \$45 per kiddie ride and \$90 per adult ride.

2. Direct Private Sector Benefits:

The industry will benefit from increased inspections. The inspections will identify problems and concerns with individual rides which can be resolved with a resulting increase in patron safety.

3. Effects on Competition, Private Enterprise and Employment Markets:

There would be no adverse effect to these areas as a result of this bill.

D. FISCAL COMMENTS:

The anticipated revenue amounts listed above were calculated by counting the number of permanent parks currently permitted by the Department of Agriculture and Consumer Services and applying the addition of one inspection per year for each permanent device, or a total of two inspections per annum. Based on the number of inspections conducted in fiscal year 96-97 on permanent amusement devices, an increase in inspection revenue per annum of \$37,350 is estimated. The number of inspections for permanent amusement devices is expected to remain unchanged for the next three (3) years.

*Year 1:	120 permanent park kiddie rides x \$45=	\$ 5,400
	355 permanent park adult rides x \$90=	<u>31,950</u>
	Total	<u>\$37,350</u>

*Years 2 & 3 have the same estimated number of inspections.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take actions requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any county or municipality.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce any state tax revenues shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Ziebarth offered a strike-everything amendment to HB 4221, which incorporated the language from CS/SB 1460, as well as retaining some original language from HB 4221. The language from CS/SB 1460 incorporated into CS/HB 4221:

- adds language stating inspections, and reinspections, will be done on a “first come, first served” basis and overflow requests will be scheduled on the closest date to the date requested;
- clarifies the Department of Agriculture and Consumer Services (department) must present competent and substantial evidence of a violation or threatened violation;
- removes the definition for “sponsor of event”;
- removes the reference to rides being maintained in a sanitary condition;
- removes the department’s ability to take action or impose fines on the owner for operating a ride with a patron whose faculties are impaired due to alcohol or drugs; this also applies to the owner of a ride;
- removes language disallowing reinstatement of a current permit or issuance of a new permit if circumstances or conditions still exist for which the permit or certificate was suspended;
- removes language allowing the department to deny a permit or certificate for a ride whose permit or certificate has been revoked at two separate times; and
- removes the fee for unannounced inspections.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE:

Prepared by:

Legislative Research Director:

Debbi Kaiser

Susan D. Reese

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Legislative Research Director:

Carol L. Dickson-Carr

Keith G. Baker, Ph.D.