

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 724

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senator Margolis

SUBJECT: County Tourism Promotion Agencies

DATE: March 27, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Maclure	CM	Favorable/CS
2.	_____	_____	CP	_____
3.	_____	_____	FT	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The committee substitute provides authority for a county government to prohibit a business entity from using business names associated with tourism promotion entities in the county that are funded by the local option tourist development tax.

This committee substitute substantially amends the following sections of the Florida Statutes: 125.01 and 125.0104.

## II. Present Situation:

### County Government

Section 1, Art. VIII of the State Constitution, adopted in 1992, provides authority to non-charter and charter counties to act as local self-government entities and describes how the county may implement this authority through passage of county ordinances that are not inconsistent with state law.<sup>1</sup> If a conflict exists between a county ordinance and an ordinance of a municipality located within the county, in charter counties, the county charter would specify whether the county ordinance or the municipal ordinance prevails.<sup>2</sup> In non-charter counties, the county ordinance does not apply in those municipalities with municipal ordinances that conflict with the county ordinance.<sup>3</sup>

<sup>1</sup> Section 1(f) and (g), Art. VIII, State Constitution.

<sup>2</sup> Section 1(g), Art. VIII, State Constitution.

<sup>3</sup> Section 1(f), Art. VIII, State Constitution.

Section 125.01, F.S., describes the powers of county governments and states that the powers listed include but are not restricted to what the section enumerates. Paragraph (t) of subsection (1) states that the county may “[a]dopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law.” Additionally, clarification of a county government’s powers are found in subsection (3), paragraphs (a) and (b), which state that the “enumeration of powers herein shall not be deemed exclusive or restrictive, but shall be deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated” and that the “provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution.”

## **Tourism**

Visit Florida, the not-for-profit, direct-support organization for the Florida Commission on Tourism, administers Florida’s 5 welcome centers.<sup>4</sup> Not-for-profit convention bureaus, tourist bureaus, tourist information centers, and news bureaus operated by counties or by contract with chambers of commerce or similar organizations also provide tourism-related information to visitors. These organizations receive funding from the tourist development tax<sup>5</sup> to provide a listing of tourism resources in their area to Florida’s visitors and encourage them to stay longer by describing the various activities and amenities in the area. These organizations describe their area of the state and do not sell products.

The tourist development council was created in s. 125.0104, F.S., to make recommendations to the county governing body regarding the effective operation of special projects or for uses of the tourist development tax revenue and to perform other functions assigned to it by ordinance. Additional powers and duties of agencies created for the purpose of tourism promotion by a county levying the tourist development tax are provided in s. 125.0104(9), F.S.

Florida’s visitors face an array of choices for locating tourism information. Current law does not prevent for-profit tourism-related organizations from describing or characterizing themselves as “official” tourism-information locations, thereby making it difficult for visitors to distinguish between the for-profit and not-for-profit tourism-information locations. If a visitor enters a for-profit tourism-related organization, the visitor may receive tourism-related information for that area, but may also be required to listen to a sales promotion for something such as timeshares in order to receive discounted theme park tickets. Both not-for-profit and for-profit tourism-information centers provide information to visitors, but a visitor may not be able to determine from the advertising signage what type of operation is being entered.

The Florida Association of Convention and Visitors Bureaus (FACVB) points out that the North American Free Trade Agreement (NAFTA) adopted the question mark symbol for government-sponsored tourism-information locations, and Europe and Asia have adopted a white letter “I” on a blue background to designate government-sponsored tourism-information locations. However,

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<sup>4</sup> Section 288.12265(2), F.S. The return on investment of these centers is \$2.88 returned to the General Revenue Fund for every \$1.00 invested. Office of Program Policy Analysis and Government Accountability, Program Review, *Visit Florida Performs Well and Its Funding Should Be Continued*, No. 03-07, p. 6 (Jan. 2003) (citing data from Visit Florida).

<sup>5</sup> Section 125.0104(5)(a)3., F.S.

according to FACVB, the use of the question mark has not been implemented in Florida because it may not be meaningful to European and Asian visitors.

### **Prohibited Names**

Statutes have been enacted limiting the use of certain terms in the name of a business entity.<sup>6</sup> Statutes limiting the use of certain terms in the name of a business have been upheld against attack under the First Amendment of the U.S. Constitution and under the Equal Protection Clause of the U.S. Constitution when the purpose of the statute is to prevent consumers from being misled.<sup>7</sup>

### **Civil Enforcement**

Chapter 495, F.S., authorizes the courts to enjoin the improper use of a mark, trade name, label, or form of advertisement under certain circumstances. Under s. 495.151, F.S.:

Every person, association, or union of workers adopting and using a mark, trade name, label or form of advertisement may proceed by suit, and all courts having jurisdiction thereof shall grant injunctions, to enjoin subsequent use by another of the same or any similar mark, trade name, label or form of advertisement if it appears to the court that there exists a likelihood of injury to business reputation or of dilution of the distinctive quality of the mark, trade name, label or form of advertisement of the prior user, notwithstanding the absence of competition between the parties or of confusion as to the source of goods or services.

### **III. Effect of Proposed Changes:**

The committee substitute provides authority for a county government to prohibit a business entity, except a county tourism promotion agency, from using the names:

- convention and visitor bureau,
- visitors bureau,
- tourist development council,
- vacation bureau, or
- any other names specifically designated by ordinance

when representing itself as a tourism-information location. The committee substitute adds these names in a new paragraph (e) to s. 125.0104(9), F.S. These names generally are used by county-operated, not-for-profit, tourism-information locations to offer tourism information to visitors. The committee substitute appears to protect those names, and others that may be passed by ordinance, from use by for-profit entities or not-for-profit entities not affiliated with a county, in an effort to reduce confusion to visitors of what is a government-sponsored versus a non-

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<sup>6</sup> See, e.g., ss. 636.033 and 641.33, F.S., (limiting the use of the following words in the name of a business: “insurance,” “casualty,” “surety,” and “mutual”); former s. 665.02, F.S., (repealed in 1969) (limiting the use of the term “savings” in the name of a business).

<sup>7</sup> See *Baker v. Registered Dentists of Oklahoma*, 543 F. Supp 1177 (W.D. Oklahoma 1982); *Greater Miami Fin. Corp. v. Dickinson*, 214 So. 2d 874 (Fla. 1968).

government sponsored tourism-information location. The penalty for businesses violating the provisions of the committee substitute would depend on the how the county government chooses to enforce its ordinances.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Future for-profit tourism-related organizations, and not-for-profit tourism-information locations not affiliated with a county, wishing to advertise with names such as a convention and visitors bureau, visitors bureau, tourist development council, or vacation bureau may be prevented by county ordinance from doing so. Confusion regarding which organizations are government-sponsored tourism-information locations may be minimized.

C. Government Sector Impact:

The committee substitute provides a county government with additional authority to deal with entities attempting to utilize names that would be specified in s. 125.0104(9)(e), F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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