

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Subcommittee on Finance and Tax

BILL: CS/CS/CS/SB 502

INTRODUCER: Budget Subcommittee on Finance and Tax; Community Affairs Committee; and Agriculture Committee and Senator Hays

SUBJECT: Public Fairs and Expositions

DATE: December 5, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbenner</u>	<u>Buford</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Hinton</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>BFT</u>	<u>Fav/CS</u>
4.	_____	_____	<u>BC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/CS/SB 502 (the bill) creates or revises definitions in ch. 616, F.S., Public Fairs and Expositions, to clarify the usage of fairground facilities for an annual public fair or for other authorized uses. Chapter 616, F.S., states that, in addition to public service, the primary objective of a fair association is to hold, conduct, and promote public fairs or expositions. It requires an association to pursue those objectives in good faith.

The bill permits a fair association to file its charter and amendments as a Florida Not for Profit Corporation and provides for dissolution by a resolution procedure set forth in the charter. It makes a declaration that authorized uses by a fair association serve an essential government purpose which codifies long standing case law regarding the right to certain tax exemptions. The bill expands the list of activities and functions authorized for a fair association to reflect current practices and it affirms that a fair association is a noncommercial activity provider. It removes language allowing a fair association to charge an admission fee and confirms that the Department of Transportation may contribute land for a fair's use.

The bill changes the waiver from local occupational license to a waiver from local business taxes for a fair association and an operator of an activity at an annual fair to conform to the definition in ch. 205, F.S.

The bill prohibits a fair association from conducting more than one annual public fair. It requires the Department of Agriculture and Consumer Services (DACS) to issue a permit within 10 days after application requirements have been met. It reduces the time for a fair association to apply for a waiver from the required minimum number of exhibits. It allows agricultural and livestock exhibit buildings to be used for any public fair purpose.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 288.1175, 616.001, 616.01, 616.02, 616.03, 616.05, 616.051, 616.07, 616.08, 616.101, 616.11, 616.12, 616.121, 616.14, 616.15, 616.17, 616.185, 616.19, 616.21, 616.23, and 616.24.

II. Present Situation:

The Legislature first passed laws for the purpose of regulating state fair associations and operations by enacting ch. 7388, L.O.F, in 1917. In 1974, the Legislature enacted ch. 74-322, L.O.F., which created the Florida State Fair Authority to deal exclusively with the staging of the annual state fair in Tampa, Florida. The last major changes to the statute occurred when the statute was reviewed in 1993 under provisions of the Regulatory Sunset Act. At that time, it was revised and reenacted by the provisions of ch. 93-168, L.O.F.

Besides the state fair in Tampa, there are approximately fifty other district, regional or county fair associations that stage an annual fair as well as public fairs and expositions. Part I of ch. 616, F.S., sets forth procedures for a fair association to obtain a permit from DACS and provides guidelines for staging these events. Forty nine of the fair associations are members of the Florida Federation of Fairs and Livestock Shows, a Florida Non Profit Corporation, (Federation) whose mission is to increase the overall quality of agricultural fairs, provide members support and guidance to educate youth and fairgoers on agriculture, trade, entertainment, and heritage of Florida.¹ Addressing legislative affairs is a support function provided by the organization for its members. Federation representatives report that actual practices over the years show some minor variances from the language of the statute and have proposed amendments to reflect this and to make other changes.

A fair association is required to record its charter and amendments with the clerk of the county where its principal office is located and to file a copy with DACS. The controlling statute indicates that the association to be formed would be not for profit but is silent as to filing with the Department of State.

Currently operators of an activity at permitted fair and fair associations are exempt from certain license taxes which are now referred to as local business taxes in ch. 205, F.S.

Currently there is no statutory deadline for DACS to issue the annual fair permit after the completed application has been received. Also, a fair association has to request a waiver from the minimum number of exhibits at least 60 days before the annual public fair. Buildings authorized

by ss. 616.21-616.23, F.S., are limited to being used as agricultural or livestock exhibition buildings.

Several sections of Florida Statutes govern taxation of fairs and fair activities conducted by third parties:

Section 212.031(6), F.S., provides that leases and rentals of land, a hall, or other facilities by a fair association to a show promoter or prime operator of a carnival or midway attraction are exempt from the tax on rental or license fee for use of real property; however, the sublease of land or a hall or other facilities by the show promoter or prime operator is not exempt from the provisions of this section.

Section 212.08(7)(gg), F.S., exempts from sales and use tax the sale, use, lease, or grant of a license to use, made directly to or by a fair association, of real or tangible personal property. Any charge made by a fair association, or its agents, for parking, admissions, or for temporary parking of vehicles used for sleeping quarters; rentals, subleases, and sublicenses of real or tangible personal property between the owner of the central amusement attraction and any owner of an amusement ride is also exempt. This exemption does not apply to the sale of tangible personal property made by a fair association through an agent or independent contractor; sales of admissions and tangible personal property by a concessionaire, vendor, exhibitor, or licensee; or rentals and subleases of tangible personal property or real property between the owner of the central amusement attraction and a concessionaire, vendor, exhibitor, or licensee, except for the furnishing of amusement rides, which transactions are exempt.

Section 212.13(6), F.S., requires a fair association to distribute and collect forms from any concessionaire, vendor, exhibitor, or licensee. These forms must request, at a minimum, the name, business address, and telephone number of the concessionaire, vendor, exhibitor, or licensee, its sales tax registration number, and the amount of daily revenue that it receives as a result of activities and sales on the fairgrounds of as a result of the use of assets or other property of the fair association.

III. Effect of Proposed Changes:

Section 1 amends s. 616.001, F.S., to renumber subparagraphs and cross-references thereto as appropriate and to add or revise definitions as follows:

- Defines “Annual public fair” as a community, county, district, regional, or state fair that is held and conducted by a fair association and permitted by DACS pursuant to s. 616.15, F.S.;
- Revises the definition of “Community fair” to specify that it means “an annual public” fair and to make technical language changes;
- Defines “Concession” as used by a fair association or use of a portion of the land by a third party through an arrangement with a fair association for specific uses, or the right to enter upon the land for specific purposes, such as providing rides, games, food, beverage, merchandise for sale, exhibits, projects, activities, events, programs, or other uses authorized in ch. 616, F.S.;
- Revises the definition of “County fair” to specify that it means “an annual public” fair and to make technical language changes;

- Revises the definition of “District fair” to specify that it means “an annual public” fair and to make technical language changes;
- Revises the definition of “Entry” to make technical language changes;
- Revises the definition of “Exhibit” to specify that the term includes parades and displays of articles or a collection of articles by a fair association or a third party such as exhibits of animals, art, housewares, or motor vehicles;
- Revises the definition of “Exhibitor” to specify that the term includes a fair association or a third party contracting with a fair association and to make technical language changes;
- Revises the definition of “Public fair or exposition” to state that the term means a project, activity, event, or program and use by a fair association, including the annual public fair event, which serves the purposes specified in s. 616.08, F.S., and to make technical language changes;
- Revises the definition of “Regional fair” or “interstate fair” to specify that it means “an annual public” fair and to make technical language changes;
- Revises the definition of “Specialized show” to make technical language changes;
- Revises the definition of “State fair” to specify that it means “an annual public” fair and to make technical language changes.

Section 2 amends s. 616.01, F.S., to clarify that certain provisions pertaining to the formation of a charter for a fair association apply to the “annual public” fair and to make technical language changes. It deletes a provision allowing memberships to be for terms of years.

Section 3 amends s. 616.02, F.S., to delete a requirement that subscribers to a proposed charter be of good character and reputation. It adds to the subscribers’ oath an acknowledgment that the objective of a fair association, in addition to public service, is holding, conducting, and promoting public fairs or expositions and a commitment that the association will operate in good faith to carry out its objectives. It also makes technical language changes.

Section 4 amends s. 616.03, F.S., to make technical language changes regarding the procedures for applying for a charter for a fair association. It permits a fair association to file its duly approved charter with the Department of State under the Florida Not For Profit Corporation Act, ch. 617, F.S.

Section 5 amends s. 616.05, F.S., to make technical language changes regarding amendments to a fair association’s charter. It requires an association that has filed its charter with the Department of State to also file amendments to the charter with that department.

Section 6 amends s. 616.051, F.S., to make technical language changes regarding dissolution of a fair association. It permits dissolution by a resolution provided in the charter in addition to the resolution procedure now authorized to be set forth in an association’s bylaws.

Section 7 amends s. 616.07, F.S., to make technical language changes regarding personal liability of members, officers, directors, or trustees of a fair association and exemptions from taxes. It also makes a declaration that acts of a fair association in pursuit of its legitimate purposes serve an essential governmental purpose. It expands the exemption from all forms of taxation that currently applies to “all money and property of the association” to include “any projects, activities, events, programs, and uses authorized by this part,” and adds language specifying that this section does not provide an exemption from or affect any tax imposed under ch. 212, F.S.

Section 8 amends s. 616.08, F.S., to make technical language changes regarding additional powers of the fair associations. It authorizes the fair association to enter into a lease or rent of space for concessions and adds “equine” to the list of authorized exhibits. The bill adds the following types of activities to the list for which facilities may be provided: educational, horticultural, livestock, equestrian, charitable, historical, civic, cultural, scientific, and other resources of the area plus exhibits, concessions, entertainment events, recreational vehicle parking, auctions, trade shows, and concerts. The bill declares that a fair association organized under this chapter is a noncommercial activity provider.

Section 9 amends s. 616.101, F.S., to make technical language changes regarding the annual review of accounts and records of a fair association. It changes the word “fair” to “annual public fair” which makes this section pertain only to a fair association with a permitted annual fair.

Section 10 amends s. 616.11, F.S., to make technical language changes regarding a fair association’s authorization to contract with governmental entities for use of land. It removes language authorizing fair association to receive an admission fee and it specifically adds the Department of Transportation as a governmental entity that may contribute land for use by a fair association.

Section 11 amends s. 616.12, F.S., to make technical language changes regarding licenses and the exemption from local business taxes authorized by ch. 205, F.S., for an operator of an activity at an annual public fair held by a fair association that satisfies the requirements of ch. 616, F.S., Public Fairs and Expositions. It changes the words “public fair” to “annual public fair” and it deletes the word “exposition” which makes this section pertain only to a fair association that has a permitted annual public fair. The bill makes technical language changes regarding the exemption from local business taxes authorized by ch. 205, F.S., for a fair association that has secured the required permit for an annual fair.

Section 12 amends s. 616.121, F.S., to make technical language changes regarding the penalty for making a false application for an annual fair permit. It changes the words “a public fair” to “an annual public fair” and it deletes the word “exposition” which makes this section pertain only to an application for an annual public fair permit.

Section 13 amends s. 616.14, F.S., to prohibit a fair association from conducting more than one annual public fair and it deletes the word “exposition” which makes this section pertain only to a fair association that has a permitted annual public fair.

Section 14 amends s. 616.15, F.S., to make technical language changes regarding procedures a fair association must follow to obtain a permit from DACS. It requires DACS to issue a permit within 10 days after the application requirements have been fulfilled. The bill changes the words “public fair” to “annual public fair” and it deletes the word “exposition” which makes this section pertain only to a fair association seeking a permit for an annual public fair.

Section 15 amends s. 616.17, F.S., to make technical language changes regarding the minimum number of exhibits and changes the word “public fair” to “annual public fair” and it deletes the word “exposition” which makes this section pertain only to a permitted annual public fair. It reduces the

time to 30 days from 60 days before the annual public fair in which a fair association may apply for a waiver from the minimum number of exhibits.

Section 16 amends s. 616.185, F.S., to make technical language changes regarding trespass upon grounds or facilities of public fair associations to clarify that it applies to all grounds or facilities owned or used by any fair association permitted under s. 616.15, F.S.

Section 17 amends s. 616.19, F.S., to make technical language changes regarding designation of fairs to clarify that it applies to all fair associations created pursuant to ch. 616, F.S.

Section 18 amends s. 616.21, F.S., to make technical language changes regarding the expenditure of appropriated funds on agricultural and livestock exhibit buildings.

Section 19 amends s. 616.23, F.S., to remove a limitation that certain buildings were to be used only as agricultural and livestock exhibit buildings which will allow the buildings to be used for any public fair or exhibition purpose.

Section 20 amends s. 616.24, F.S., to make a technical language change regarding the enforcement of ch. 616, F.S., Public Fairs and Expositions.

Section 21 amends s. 288.1175, F.S., to change cross-references.

Section 22 provides that this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that this bill has no revenue impact.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Budget Subcommittee on Finance and Tax on January 24, 2012: The CS clarifies that the bill does not create any new exemptions for taxes imposed under ch. 212, F.S

CS/CS by Community Affairs on December 5, 2011: The CS makes a technical change.

CS by Agriculture on November 14, 2011: The CS revises the definition of “Public fair or exposition” to cover all functions, including the annual public fair, which serve the purposes of s. 616.08, F.S. It removes language creating an exemption for fair associations from local land use and zoning ordinances from certain enumerated fees and taxes of local governments.

B. Amendments:

None.