

**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 Agriculture Committee

BILL: SB 502

INTRODUCER: Senator Hays

SUBJECT: Public Fairs and Expositions

DATE: November 10, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Buford	AG	<b>Pre-meeting</b>
2.	_____	_____	CA	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

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. It 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, it exempts fair associations in existence on July 1, 2011, from local land use and zoning ordinances, and it affirms that a fair association is a noncommercial activity provider. It removes language allowing a government entity that contributes land for a fair association's use to charge admission fees and confirms that the Department of Transportation may contribute land for a fair's use.

The bill creates a waiver from local business taxes authorized in chapter 205, F.S. for a fair association and an operator of an activity at an annual fair. It further exempts a fair association from other local fees and taxes.

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 the following sections of the Florida Statutes: 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 the Department of Agriculture and Consumer Services (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 statement 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.<sup>1</sup> 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 aimed at contributing to the viability of a fair association's operations.

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.

The Federation reports that some lands and facilities used by member fair associations have become partially or totally surrounded by urban growth which has resulted in conflicts because uses authorized by ch. 616, F.S., are inconsistent with some local land use and zoning ordinances. The Legislature recognizes that municipal or county officials have been given broad statutory and constitutional powers to plan for and regulate the use of land through the adoption of comprehensive land use plans.<sup>2</sup> An Advisory Legal Opinion<sup>3</sup> issued by the Attorney General's office on July 13, 2010 made it clear that land use and zoning ordinances of a municipality are applicable to real property located within the city and occupied and operated by a county fair association in the absence of any state statute exempting fair associations from local land use regulations or preempting this area of legislation to the state. Representatives from the Florida

<sup>1</sup> Florida Federation of Fairs & Livestock Shows, available at (<http://www.floridafairs.org/>). Last visited 11/7/2011.

<sup>2</sup> S. 163.3161, F.S., commonly referred to as the "Community Planning Act."

<sup>3</sup> Op. Att'y Gen. Fla. 2010-28 (2010).

Association of Counties and the Florida League of Cities assert that there is not a need for a broad encroachment upon, nor is it a good practice to preempt, a local government's authority to control land use within its boundaries.

Currently operators of an activity at a permitted fair and fair associations are exempt from certain license taxes but are not exempt from local business taxes authorized in ch. 205, F.S., or from certain other local fees and taxes. Representatives from the Florida Association of Counties and the League of Cities are studying the fiscal impact of exempting these fees and taxes and express concern about how the funds would be provided to deliver services that would normally be supported by these fees and taxes.

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.

### 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 use 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 the annual public fair or other function 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, confirming exemption of its money and property from all forms of taxation and special assessments.

**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 exempts fair associations in existence as of July 1, 2011, from local land use and zoning ordinances that conflict with public fair uses and purposes and it 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 a contributor of land for use by a 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 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 further creates an exemption from local business taxes authorized by ch. 205, F.S., for those operators. 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 creates an exemption for a fair association that has secured the required permit for an annual fair from local business taxes authorized by ch. 205, F.S., as well as inspection fees, franchise fees and taxes, utility service fees and taxes, communication service fees and taxes, surplus line fees and taxes, and impact fees.

**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, and to change cross-references to statutory sections due to renumbering based on amendments.

**Section 21** provides that this act shall take effect July 1, 2012.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

As the Revenue Estimating Conference has not reviewed this bill yet, it is not known if there is a fiscal impact that reaches the threshold level of a mandate due to a fair association's exemption from local land use and zoning ordinances, its exemption from local business taxes and its exemption from other local taxes and fees.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

As the Revenue Estimating Conference has not reviewed this bill yet, it is not known if there is a significant fiscal impact to municipalities or counties due to a fair association's exemption from local business taxes, and its exemption from other local taxes and fees.

B. Private Sector Impact:

Operators of activities at an annual public fair will benefit in an unknown amount at this time to the extent that local business tax authorized in ch. 205, F.S., are waived.

C. Government Sector Impact:

As the Revenue Estimating Conference has not reviewed this bill yet, it is not known if there is a significant fiscal impact to municipalities or counties due to a fair association's

exemption from local land use and zoning ordinances, its exemption from local business taxes, and its exemption from other local taxes and fees.

**VI. Technical Deficiencies:**

The revised definition for “Public fair or exposition” in section 1 of the bill is ambiguous in that it reads “Public fair or exposition means the annual public fair or ...” The revised definition was intended to be broad and inclusive so that the term “public fair” included the “annual public fair” as well as other authorized functions. A literal reading could be interpreted to mean that a public fair or exposition is the same as the “annual public fair” and therefore bound by all the sections of the statute which apply only to the annual public fare, which result is not what was intended by the definition revision.

**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.)

None.

**B. Amendments:**

None.