

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1033 Dockless Bicycle Sharing
SPONSOR(S): Careers and Competition Subcommittee, Toledo and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1304

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 1 N, As CS	Willson	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

Bicycle sharing is a service in which bicycles are made available for rental on a short term basis for a price.

Section 316.2065, F.S., regulates the operation of bicycles in Florida. Bicycle riders are generally subject to the same rights and duties that are applied to the driver of any other vehicle under state traffic laws codified in the State Uniform Traffic Control Law, Ch. 316, F.S.

Currently, the regulation of bicycle sharing companies is left up to local jurisdictions. Cities contract with both dockless bicycle sharing companies and docked bicycle sharing companies.

The bill preempts the governance of dockless bicycles and dockless bicycle sharing companies to the state and creates a regulatory framework governing the operation of dockless bicycle sharing companies in the state. The bill does not relate to docked bicycle sharing companies.

The bill creates s. 341.851, F.S., relating to dockless bicycle sharing, and defines "dockless bicycle" as a bicycle, including an electric bicycle, that is self-locking and that is not connected to a docking station. The bill defines "dockless bicycle sharing company" as an entity that makes dockless bicycles available for private use by reservation through an online application, software, or website. The bill also defines a number of other terms as they relate to the regulation of dockless bicycle sharing.

The bill provides that a person or entity may not operate a dockless bicycle sharing company in this state unless the person or entity maintains a current and valid combined single-limit policy of commercial general liability insurance coverage in the amount of at least \$500,000 per occurrence for bodily injury and property damage.

The bill requires that dockless bicycles made available for reservation by a dockless bicycle sharing company must meet certain specifications. The bill requires that the dockless bicycle sharing company must provide for an interface allowing for the communication of certain notifications. The bill imposes certain responsibilities on the dockless bicycle sharing company relating to maintenance and operability requirements.

The fiscal impact on local or state government is indeterminate.

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Uniform Traffic Control Law, Bicycle Regulation, and Local Authority

The Legislature has passed a wide array of traffic control laws, known collectively as the “Florida Uniform Traffic Control Law” (UTC)¹ in order to standardize traffic regulation and enforcement across the several 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 covered by the UTC.²

The UTC 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.³

Under the UTC, bicyclists are considered vehicle operators and are generally required to obey the same rules of the road as other vehicle operators, including obeying traffic signs, signals, and lane markings.⁴ Section 316.2065, F.S., governs the operation of bicycles⁵ 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.
- 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.
- Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing must ride in the lane marked for bicycle use or, if no lane is marked for bicycle use, as close as practicable to the right-hand curb or edge of the roadway except under certain circumstances.
- Persons riding bicycles upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

Additionally, the UTC allows local authorities to exercise some discretion over matters relating to bicycle safety and operation:

¹ Chapter 316, F.S., is known as the “Florida Uniform Traffic Control Law”.

² s. 316.002, F.S.; s. 316.007, F.S.

³ s. 316.003(3), F.S.

⁴ s. 316.2065(1), F.S.

⁵ Section 316.003(3), F.S., defines “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.”

- 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.⁶
- 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 to require signs and markings to be placed to designate a no-passing zone.⁷

Bicycle sharing companies, dockless or docked, are not regulated by the state, therefore it is left up to local jurisdictions.

Insurance

Chapter 316, F.S., State Uniform Traffic Control, provides various statutes concerning security or insurance requirements.⁸

Section 316.646, F.S. provides:

(1) Any person required by s. 324.022 to maintain property damage liability security, required by s. 324.023 to maintain liability security for bodily injury or death, or required by s. 627.733 to maintain personal injury protection security on a motor vehicle shall have in his or her immediate possession at all times while operating such motor vehicle proper proof of maintenance of the required security.

Section 324.022, F.S., provides:

(1) Every owner or operator of a motor vehicle required to be registered in this state shall establish and maintain the ability to respond in damages for liability on account of accidents arising out of the use of the motor vehicle in the amount of \$10,000 because of damage to, or destruction of, property of others in any one crash. The requirements of this section may be met by one of the methods established in s. 324.031; by self-insuring as authorized by s. 768.28(16); or by maintaining an insurance policy providing coverage for property damage liability in the amount of at least \$10,000 because of damage to, or destruction of, property of others in any one accident arising out of the use of the motor vehicle. The requirements of this section may also be met by having a policy which provides coverage in the amount of at least

⁶ s. 316.008(7)(a), F.S.

⁷ s. 316.0875, F.S.

⁸ *Classy Cycles, Inc. v. Bay County*, 201 So.3d 779, 787 (2016). The court notes that, “Florida motor vehicle insurance law is such a cross-referenced labyrinth that one might assume a Minotaur of motor vehicle insurance lurks deep within it.”

\$30,000 for combined property damage liability and bodily injury liability for any one crash arising out of the use of the motor vehicle. The policy, with respect to coverage for property damage liability, must meet the applicable requirements of s. 324.151, subject to the usual policy exclusions that have been approved in policy forms by the Office of Insurance Regulation. No insurer shall have any duty to defend uncovered claims irrespective of their joinder with covered claims.

In s. 324.022, F.S., motor vehicle is defined to only refer to four-wheeled vehicles, and requires owners or operators of four-wheeled vehicles to maintain \$10,000 in security (typically insurance) for damage to property of others.⁹ There is no requirement for bodily injury coverage for most owners or operators of any motor vehicle in Florida.¹⁰

Section 316.646, F.S. and ch. 324, F.S., govern financial responsibility for owners and operators of motor vehicles, and the no fault law in ss. 627.730–627.7405, F.S., create a comprehensive system for requiring insurance for certain vehicles under Florida law. Section 324.021(9)(b)2., F.S., limits the potential liability of lessors of motor vehicles (defined in section 324.021(1), F.S., to include motorcycles for the purpose of that section, but to not include mopeds), but does not require lessors or lessees to maintain any coverage beyond what is mandated by other provisions of Florida law.

Section 316.211(3)(b), F.S. imposes an insurance requirement for medical benefits on a motorcycle operator if the operator is at least 21 years old and wants to ride without a helmet. This is the only insurance required by Florida law for most owners or operators of motorcycles.¹¹ There is no requirement under Florida law for insurance for bicycles, mopeds or motor scooters.

Neither state nor federal laws regulate any type of bicycle sharing company or require general liability insurance coverage.

Bicycle Share Programs

Bicycle share programs allow users to rent available bicycles located in an area. The bicycle may or may not be at one or more unmanned, designated bicycle racks, depending on whether the bicycle company is dockless or docked. The user unlocks the bicycle using information provided by or transmitted from the program's mobile application on their mobile phone, and the bicycle may be used according to the terms of the program agreement, which may require the user to sign a waiver of liability prior to using the bicycle.

Many jurisdictions require that the bicycle share company acquire a permit for operations.

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.¹²

⁹ *Id.* Section 316.646 also incorporates the requirement to maintain personal injury protection as required by section 627.733, F.S. (2014). Section 627.733, F.S. in turn references ss. 627.730 through 627.7405, F.S. These provisions of the Florida Motor Vehicle No-Fault Law require owners of four-wheeled motor vehicles to maintain \$10,000 in personal injury protection security. *See* ss. 627.733 and 627.736, F.S.

¹⁰ *Id.* s. 324.023, F.S. Owners or operators of motor vehicles who are convicted of driving under the influence have to maintain bodily injury coverage, with policy limits of at least \$100,000 for one person, and \$300,000 for two or more persons in a crash. ss. 324.021(7) and (8), 324.031, and 324.051(2), F.S. Owners and operators of motor vehicles involved in a crash must also maintain bodily injury coverage in the amount of at least \$10,000 per person and \$20,000 per crash to avoid a license suspension.

¹¹ *Id.* ss. 324.021(7) and 324.051(2), F.S. After a motorcycle has been in a crash, the owner or operator must provide proof of bodily injury coverage in the amount of at least \$10,000 per person and \$20,000 per crash to avoid a license suspension. s. 324.023, F.S. Owners or operators of motorcycles who are convicted of driving under the influence have to maintain bodily injury coverage, with policy limits of at least \$100,000 for one person, and \$300,000 for two or more persons in a crash.

¹² *See, e.g.,* Broward B-cycle <https://broward.bcycle.com/>; Juice Orlando Bike Share <https://juicebikeshare.com/#about>

Additionally, bicycle share programs: allow bicycles to be reserved; penalize or charge an extra fee for using the integrated lock to secure the bicycle away from a designated bicycle rack, station, or “hub”; equip their bicycles with GPS technology to allow users to locate bicycles available nearby via their mobile application or allow the company to locate bicycles, track movement, calculate distance traveled, or apply geofencing technology to control where bicycles may be rented, returned, parked, etc. set minimum or maximum amounts that can be charged per day; or offer “rewards” to incentivize the transport or return of bicycles to certain locations.

Local governments in Florida, and across the country, have entered into public-private partnerships with bicycle share companies to facilitate bicycle share programs in their jurisdiction. Proponents of this approach cite the importance of such partnerships in the successful implementation of bicycle share programs in local communities.¹³ Specific examples include the use of dockless bicycle share data to assist in local bicycle network planning, prioritization, and evaluation, and the use of local regulations to incentivize users to start or end their trip at a mass transit stop in order to combat first-mile, last-mile challenges.¹⁴ Local partnership advocates believe that working closely with local governments is necessary to ensure that sufficient safety standards are in place, control over the public right-of-way is properly maintained, sensitive customer data is protected, and that bicycle share operations are tailored to the needs and characteristics of local communities.

Some local governments and bicycle share companies have entered into an exclusive, long term contracts, effectively banning any other company from operating within that jurisdiction or specific areas.¹⁵ These contracts may include requirements that the bicycle company have general liability insurance.

Dockless Bicycles

The absence of designated bicycle racks, stations, or hubs to “dock” the bicycles when not in use distinguishes the “dockless” bicycle sharing model from more traditional bicycle sharing models. In the past few years, the dockless bicycle sharing industry has experienced tremendous growth both in the United States and abroad.¹⁶

Dockless bicycle companies 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.¹⁷ 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 aren’t 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.

¹³ See Letter from NASBA, Re: Opposition to SB 1304/HB 1033: Dockless Bicycle Sharing (Jan. 12, 2018). Copy on file with Careers and Competition Subcommittee. The North American Bikeshare Association (NASBA) was formed to support, promote and enhance bikeshare across North America on behalf of its members, who represent a wide share of the bikeshare industry, including system owners, operators, host cities, equipment manufacturers and technology providers.

Letter from SPIN, Re: Opposition to HB 1033/SB1304: Dockless Bicycle Sharing (Jan. 10, 2018). Copy on file with Careers and Competition Subcommittee. Letter on file with Careers and Competition Subcommittee. SPIN is a leading stationless bike share company in the United States, operating in over two-dozen markets.

¹⁴ *Id.*

¹⁵ Johana Bhuiyan and Rani Molla. *A bike-sharing war is coming to the U.S. as investors pour money into new entrants*, RECODE (Oct. 23, 2017) <https://www.recode.net/2017/10/23/16496908/bike-sharing-dockless-limebike-ofto-motivate-citi-bike-spin>

¹⁶ See, e.g. Evgeny Tchebotarev, *With Hundreds Of Millions Of Dollars Burned, The Dockless Bike Sharing Market Is Imploding*, FORBES (Dec. 16, 2017), <https://www.forbes.com/sites/evgenytchebotarev/2017/12/16/with-hundreds-of-millions-of-dollars-burned-the-dockless-bike-sharing-market-is-imploding/#12fb1fa4543b>; Henry Grabar, *Docks Off*, SLATE (Dec. 18, 2017), <https://slate.com/business/2017/12/dock-less-bike-share-is-ready-to-take-over-u-s-cities.html>

¹⁷ See Bhuiyan & Molla. *A bike-sharing war is coming to the U.S. as investors pour money into new entrants*.

Additionally, some cities have experienced problems with bicycles being thrown into bodies of water, stranded in trees, on rooftops, and other undesirable places.¹⁸

Bicycle Share in Florida

Currently, a variety of bicycle share programs are offered by a number of companies in different local jurisdictions across the state.¹⁹

Home Rule and Preemption

Counties

A county without a charter has such power of self-government as provided by general²⁰ or special law, and may enact county ordinances not inconsistent with general law.²¹ General law authorizes counties “the power to carry on county government”²² 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.”²³

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,²⁴ acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.²⁵ 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.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.

¹⁸ Josh Cohen, *Seattle Test Will Lead to Regulating Dockless Bike-Share*, NEXT CITY (Dec. 21, 2017)

<https://nextcity.org/daily/entry/seattle-dockless-bikeshare-pilot-regulation>

¹⁹ See e.g., Florida Bicycle Associate, *Florida Bike Share Programs* <http://floridabicycle.org/florida-bike-share-programs/>; Ryan Pfeffer, *America’s first dockless bike-share company launches in Coral Gables*, TIMEOUT (Nov. 10, 2017)

<https://www.timeout.com/miami/blog/americas-first-dockless-bike-share-company-launches-in-coral-gables-111017>; Nancy Dahlberg, *You’ll find more shared bikes around town — and pay less to use them, too*, MIAMI HERALD (Nov. 12, 2017)

<http://www.miamiherald.com/news/business/article183868451.html>

²⁰ ch. 125, Part I, F.S.

²¹ FLA. CONST. art. VIII, s. 1(f).

²² s. 125.01(1), F.S.

²³ s. 125.01(1)(w), F.S.

²⁴ s. 166.011, F.S.

²⁵ Local Government Formation Manual 2017-2018, p. 16.

²⁶ s. 166.021(4), F.S.

²⁷ s. 166.011, F.S.

²⁸ Local Government Formation Manual 2017-2018, p. 16.

²⁹ s. 166.021(4), F.S.

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 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 In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.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

Effect of the Bill

The bill creates s. 341.851, F.S., relating to dockless bicycle sharing. The bill preempts the governance of dockless bicycles and dockless bicycle sharing companies to the state and creates a regulatory framework governing the operation of dockless bicycle sharing companies in the state.

Legislative Intent

The bill provides that it is the intent of the Legislature to provide Florida residents with access to innovative, environmentally friendly transportation options and to ensure the safety and reliability of dockless bicycle sharing services within the state.

Definitions

The bill defines the following terms as they relate to the regulation of dockless bicycle sharing:

- "Dockless bicycle sharing company" means an entity that makes dockless bicycles available for private use by reservation through an online application, software, or website.
- "Dockless bicycle" means bicycle, including an electric bicycle, that is self-locking and that is not connected to a docking station.
- "Local governmental entity" means a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision.
- "User" means a person who reserves a dockless bicycle through a dockless bicycle sharing company's online application, software, or website.

Insurance Requirements

The bill provides that a person or entity may not operate a dockless bicycle sharing company in this state unless the person or entity maintains a current and valid combined single-limit policy of commercial general liability insurance coverage in the amount of at least \$500,000 per occurrence for bodily injury and property damage.

Bicycle Requirements

The bill requires that dockless bicycles made available for reservation by a dockless bicycle sharing company must:

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

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).

- Meet the requirements for bicycles set forth in 16 C.F.R. part 1512.³⁵
- Be available for reservation 24 hours a day, 7 days a week.
- Prominently display the dockless bicycle company's trade dress.
- Display an e-mail address and telephone number at which a user may contact the dockless bicycle sharing company for customer support.
- Be lawfully parked when not in use.

Dockless Bicycle Sharing Company Responsibilities

The bill requires that the online application, software, or website of a dockless bicycle sharing company must provide:

- Notification that a rider of a dockless bicycle must operate the dockless bicycle in compliance with state and local law.
- An interface that enables a user to notify the dockless bicycle sharing company of an issue relating to the safety or maintenance of a dockless bicycle.

The bill specifies that a dockless bicycle sharing company is responsible for:

- the maintenance and rebalancing of each dockless bicycle that it makes available for reservation, and
- the removal of any such dockless bicycle that is for any reason inoperable.

Preemption

The bill provides that it is the intent of the Legislature to provide for uniformity of laws governing dockless bicycles and dockless bicycle sharing companies throughout the state.

The bill preempts the governance of dockless bicycles and dockless bicycle sharing companies to the state, and prohibits local governments from:

- imposing a tax on, or requiring a license for, a dockless bicycle or a dockless bicycle sharing company relating to reserving a dockless bicycle;
- subjecting a dockless bicycle or a dockless bicycle sharing company to any rate, entry, operation, or other requirement of the local governmental entity;
- requiring a dockless bicycle sharing company to obtain a business license or any other type of authorization to operate within the jurisdiction of the local governmental entity; or
- entering into a private agreement containing a provision that prohibits a dockless bicycle sharing company from operating within the jurisdiction of the local governmental entity or that limits the operation of a dockless bicycle sharing company within such jurisdiction.

The bill provides that any provision in a local governmental agreement that limits or prohibits the operation of a dockless bicycle sharing company within its jurisdiction will be unenforceable once the bill takes effect.

The bill specifies that the preemption section does not prohibit an airport or seaport from designating locations for staging, pickup, and other similar operations relating to dockless bicycles at the airport or seaport.

The bill has an effective date of July 1, 2018.

B. SECTION DIRECTORY:

³⁵ 16 C.F.R. § 1512 relates to consumer product safety, and provides specifications for bicycles sold to consumers, including mechanical and safety requirements as well as testing and certification standards and requirements. It does not appear that the rule addresses bicycles that will be offered for public use, rental, or commercial use.

Section 1 Creates s. 341.851, F.S.; providing legislative intent; providing definitions; providing insurance requirements for a dockless bicycle sharing company; providing requirements for dockless bicycles made available for reservation by such company; providing company responsibilities; providing for preemption; providing construction.

Section 2 Provides an effective date of July 1, 2018.

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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill makes any current contract between a city and a dockless bicycle sharing company unenforceable once the bill takes effect. This could have a negative impact on currently operating dockless bicycle sharing companies.

The bill preempts the regulation of dockless (but not “docked”) bicycle companies to the state. To the extent that “docked” bicycle companies compete with dockless bicycle companies in markets where bicycle sharing is regulated by the local government, the bill could provide a competitive advantage to dockless bicycles companies.

National bicycle share membership organizations and a leading dockless bicycle share company are opposed to the bill and have indicated that the bill will negatively impact their ability to maintain current contracts.³⁶

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

³⁶ Letter from NASBA; Letter from SPIN.
STORAGE NAME: h1033a.CCS
DATE: 1/23/2018

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:

The bill provides that any provision in a local governmental agreement that limits or prohibits the operation of a dockless bicycle sharing company within its jurisdiction will be unenforceable once the bill takes effect. The bill may be implicate article I, section 10 of the Florida Constitution and article I, section 10 of the United States Constitution, both of which prohibit the Legislature from passing any law that impairs “the obligation of contracts.” As a threshold matter, a law must “substantially impair” a contractual right for it be constitutionally problematic. The Florida Supreme Court has also held that “[a]n impairment may be constitutional if it is reasonable and necessary to serve an important public purpose.”

The courts have adopted a balancing test to “determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective.”

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits local governments from:

- subjecting a dockless bicycle or a dockless bicycle sharing company to any rate, entry, operation, or other requirement of the local governmental entity.

It is unclear whether this is intended to be read in conjunction with, or as an exception to, s. 316.008, F.S., which allows local jurisdictions 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, and regulating or prohibiting stopping, standing, or parking. It is not clear whether the city will still be permitted to enforce generally applicable local ordinance violations committed by dockless bicycle sharing companies or its users.

The bill does not provide for enforcement of its provisions. For example, the bill requires bicycle sharing companies to have general liability insurance but does not indicate what the penalty would be for not complying with the provision and does not indicate whether the city would be able to enforce such provision.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2018, the Careers and Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute clarifies and provides uniformity in the use of term “dockless bicycle sharing company” and “dockless bicycle”.

The analysis is drafted to the committee substitute as approved by the Careers and Competition Subcommittee.