

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 Committee on Community Affairs

BILL: CS/SB 1304

INTRODUCER: Banking and Insurance Committee and Senator Young

SUBJECT: Bicycle Sharing

DATE: February 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1304 creates a regulatory framework for bicycle sharing companies operating in the state and would preempt any local governmental entity from limiting or preventing bicycle sharing companies within their jurisdiction that demonstrate compliance with all local laws and regulations applicable to other similar businesses seeking to do business or presently doing business within the jurisdiction.

The bill provides that a person operating a bicycle sharing company in this state must maintain 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 sharing companies must register with the Division of Corporations at the Department of State and provide such registration to any governmental entity whose jurisdiction they operate within. The bill requires bicycle sharing companies to remove illegally parked bicycles and secure bicycles in the event of a tropical storm or hurricane warning. Local governments may fine companies that fail to meet these requirements by amounts specified in the bill.

The bill specifies that an airport or seaport may designate locations for the staging and pickup of bicycles, a local government entity may contract with a bicycle sharing company for the placement of bicycle docking stations on public land, and that a local government entity may enforce violations under the uniform traffic code under ch. 316, F.S.

II. Present Situation:

Bicycle Regulation

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.¹

The provisions of 16 C.F.R. part 1512, relate to consumer product safety, and provide for bicycle specifications, including mechanical and safety requirements as well as testing and certification standards and requirements.

Currently, the regulation of bicycle sharing companies is left up to local jurisdictions. Neither state nor federal laws regulate bicycle sharing companies or require general liability insurance coverage.

Bicycle Sharing Programs

Bicycle sharing programs allow users to rent available bicycles located at one or more unmanned, designated bicycle racks. 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. Many jurisdictions require that the bicycle sharing 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.² Some companies assess additional fees for locking the bicycle away from a designated bicycle rack or station.

Bicycle sharing companies often equip their bicycles with GPS technology. This allows users to locate bicycles available nearby via their mobile application and also allows the company to locate bicycles, track movement, calculate distance traveled, or apply geofencing technology to control where bicycles may be rented, returned, or parked. Some companies offer "rewards" to incentivize the transport or return of bicycles to certain locations.

Currently, a variety of bicycle sharing programs are offered by a number of companies in different local jurisdictions across the state.³ Local governments in Florida, and across the country, have entered into public-private partnerships with bicycle sharing companies to facilitate bicycle sharing programs in their jurisdiction. Proponents of this approach cite the

¹ s. 316.2065(1), F.S.

² See, e.g., Broward B-cycle <https://broward.bicycle.com/>; Juice Orlando Bike Share <https://juicebikeshare.com/#about>.

³ See e.g., Florida Bicycle Associate, Florida Bike Share Programs <http://floridabicycle.org/florida-bike-share-programs/> (Last viewed Feb. 8, 2018); 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> (Last viewed Feb. 8, 2018); 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> (Last viewed Feb. 8, 2018).

importance of such partnerships in the successful implementation of bicycle sharing programs in local communities.⁴ Specific examples include the use of dockless bicycle sharing 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.⁵ 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 sharing operations are tailored to the needs and characteristics of local communities.

Some local governments and bicycle sharing companies have entered into exclusive, long term contracts, effectively banning any other company from operating within that jurisdiction.⁶ In Florida, so far it appears that “exclusive” contracts may make a specific provider the vendor of the city, but would not ban other companies from participation.

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.⁷

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.⁸ Advocates of the dockless bicycle sharing 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. Additionally, some cities have experienced problems with bicycles being thrown

⁴ See Letter from NASBA, Re: Opposition to SB 1304/HB 1033: Dockless Bicycle Sharing (Jan. 12, 2018, on file with Banking and Insurance Committee). 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, on file with Banking and Insurance Committee). SPIN is a leading stationless bike sharing company in the United States, operating in over two-dozen markets.

⁵ *Id.*

⁶ 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-fo-motivate-citi-bike-spin> (Last viewed Feb. 8, 2018).

⁷ 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> (Last Viewed Feb. 8, 2018); 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> (Last viewed Feb. 8, 2018).

⁸ See Bhuiyan & Molla. *A bike-sharing war is coming to the U.S. as investors pour money into new entrants*.

into bodies of water, stranded in trees, on rooftops, and other undesirable places.⁹ In China, which experienced extreme growth of bicycle sharing companies, a number of companies are now going out of business and cities are experiencing problems with large numbers of dockless bicycles being dumped on public sidewalks.¹⁰

Home Rule and Preemption

Counties

A county without a charter has such power of self-government as provided by general¹¹ or special law, and may enact county ordinances not inconsistent with general law.¹² General law authorizes counties “the power to carry on county government”¹³ 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.”¹⁴

Municipalities

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,¹⁵ acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.¹⁶ 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.¹⁷

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.

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.¹⁸ Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹⁹ Express preemption of a field by the Legislature must be accomplished by clear

⁹ 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> (Last viewed Feb. 8, 2018).

¹⁰ Michelle Toh, *China’s Bike-Sharing Frenzy Has Turned Into A Bubble*, CNN Money (Dec. 29, 2017).

<http://money.cnn.com/2017/12/29/investing/china-bike-sharing-boom-bust/index.html> (last viewed Feb. 8, 2018).

¹¹ ch. 125, part I, F.S.

¹² FLA. CONST. art. VIII, s. 1(f).

¹³ s. 125.01(1), F.S.

¹⁴ s. 125.01(1)(w), F.S.

¹⁵ s. 166.011, F.S.

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

¹⁷ s. 166.021(4), F.S.

¹⁸ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

¹⁹ 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).

language stating that intent.²⁰ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.²¹ 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.²² Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.²³ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.²⁴ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.²⁵

III. Effect of Proposed Changes:

Section 1 creates s. 341.851, F.S., relating to bicycle sharing.

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 bicycle sharing services within the state.

Definitions

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

- "Bicycle sharing company" means a person who makes bicycles, as defined in s. 316.003(3), F.S., available for private use by reservation through an online application, software, or website.
- "Docking station" means a bicycle rack controlled by a bicycle sharing company where bicycles may be parked.
- "Local governmental entity" means a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision.
- "User" means a person at least 18 years of age who reserves a bicycle through a bicycle sharing company's online application, software, or website.

Minor Operators

The bill also states that a bicycle sharing company may allow a minor to operate a bicycle if accompanied by a user. Minor operators under the age of 16 must wear a helmet as required in s. 316.2065(3)(d), F.S.

²⁰ *Mulligan*, 934 So.2d at 1243.

²¹ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

²² *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

²³ *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011 (Fla. 2d DCA 2005).

²⁴ 12A FLA. JUR. 2D COUNTIES, ETC. s. 87 *Implied preemption—When preemption will be implied* (2018).

²⁵ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880 (Fla. 2010).

Insurance Requirement

The bill provides that a person may not operate a 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. A local governmental entity may annually require a bicycle sharing company to provide proof of insurance. If proof of insurance is not provided, the local governmental entity may issue a fine no greater than \$5,000 and may order the bicycle sharing company to cease and desist from operating within the local governmental entity's jurisdiction until such proof is provided.

Bicycle Requirements

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

- Meet the requirements for bicycles set forth in 16 C.F.R. part 1512 and s. 316.2065, F.S.
- Prominently display the bicycle company's trade dress.
- Display an e-mail address and telephone number at which a user or operator may contact the bicycle sharing company for customer support.
- Be lawfully parked when not in use.

Bicycle Sharing Company Responsibilities

The bill requires a bicycle sharing company to register with the Division of Corporations of the Department of State and must provide such registration to any local governmental entity in whose jurisdiction the company operates. Failure to provide such registration can result in a fine of up to \$1,000.

The bill requires a bicycle sharing company to provide through its online application, software, or website:

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

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

- The maintenance and rebalancing of each bicycle that it makes available for reservation and the removal of any such bicycle that is for any reason inoperable or does not comply with state or federal requirements for bicycles; and
- The securing of all company bicycles located in an area where a tropical storm or hurricane warning has been issued. Failure to comply with this requirement can result in a fine of no greater than \$1,000.

A bicycle sharing company must remove an unlawfully parked company bicycle within 24 hours of notice of its location and identification number by a local governmental entity. The local governmental entity may immediately move an unlawfully parked company bicycle and place it in the nearest location where it does not endanger the safe movement of pedestrians or vehicles. A local governmental entity may impose a fine of up to \$10 per bicycle, per day the bicycle is

illegally parked, not to exceed \$100 per bicycle, if the bicycle sharing company does not remove the bicycle within 24 hours of receiving notice. The local governmental entity may impound the illegally parked bicycle if the bicycle sharing company does not remove it within 10 days of receiving notice.

Preemption

The bill prohibits local governments from taking any action or adopt any local ordinance, policy, or regulation that is designed to limit or prevent a bicycle sharing company or any company engaged in the rental of bicycles from operating within its jurisdiction, provided that the company has demonstrated compliance with all local laws and regulations applicable to other similar businesses seeking to do business or presently doing business within that jurisdiction.

The bill allows:

- An airport or seaport from designating locations for staging, pickup, and other similar operations relating to bicycles at the airport or seaport;
- A local governmental entity from entering into agreements with bicycle sharing companies for the placement of docking stations on public land; or
- A local governmental entity from enforcing uniform traffic infractions under ch. 316, F.S.

Section 2 provides that the bill shall take effect upon becoming a law.

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:

To the extent that local governments currently collect exclusive fees from bicycle sharing companies, local governments will lose this source of revenue. However, the fiscal impact is unknown at this time.

B. Private Sector Impact:

The bill will create statewide uniform requirements for bicycle sharing companies and will allow any bicycle sharing company meeting the requirements of the bill to operate

throughout Florida. This is likely to increase marketplace competition among bicycle sharing companies. Bicycle sharing companies may incur costs for complying with the insurance requirement of the bill; some companies already maintain coverage.

C. Government Sector Impact:

The bill prohibits a local government entity from banning all bicycle sharing companies from within their jurisdiction.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 341.851 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Banking and Insurance on February 6, 2018:

- Includes all bicycle sharing companies that utilize an application.
- Defines user as a rider 18 years of age or older and allows only users can reserve a bicycle.
- Requires minors 17 years of age and under must be in the company of a user and minors under 16 years of age must wear a helmet as required in ch. 316, F.S.
- Defines docking station for those bicycle sharing companies that utilize them and allows local governmental entities to enter into agreements for the placement of docking stations on public land.
- Allows a local governmental entity to check once a year to see if a bicycle sharing company has the proper level of insurance coverage as required in the bill.
- Requires rental bicycles must also meet all the requirements of ch. 316, F.S.
- Requires bicycle sharing companies register their business with the Division of Corporations and provide such registration to any local governmental entity in whose jurisdiction they operate.
- Requires a bicycle sharing company to secure all their bicycles during hurricane or tropical storm warnings.
- Requires local governmental entities to give a bicycle sharing company 24 hour notice to move an illegally parked bicycle before a fine can be issued.
- Prohibits local governmental entities from passing ordinances that would prohibit a bicycle sharing company from operating within their jurisdiction.

- Clarifies local governmental entities can enforce uniform traffic violations under ch. 316, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
