

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: SB 624

INTRODUCER: Senator Simpson

SUBJECT: Fair Associations

DATE: March 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Weidenbrenner</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Pre-meeting
3.	_____	_____	<u>AFT</u>	_____
4.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 624 provides an exemption from or prohibits the assessment of fees and taxes for fair associations, as defined in s. 616.001, F.S., as follows:

- A tax, special assessment, or fee by a county related to stormwater management facilities;
- An impact or mobility fee by a county, municipality, or special district, retroactive to July 9, 2009, further requiring that any such fees collected between the retroactive date and effective date of this bill must be refunded;
- A special assessment by a municipality related to stormwater facilities even if the fair’s property is benefitted;
- An ad valorem tax on personal or real property used predominately for fair purposes;
- A special assessment by a water control district of a maintenance tax related to stormwater facilities even if the fair’s property is benefitted; and
- Any fee or assessment by a local government to maintain a stormwater management facility.

Additionally, the bill makes legislative findings and declares that this bill fulfills an important state interest.

II. Present Situation:

Fair Associations

A “fair association” is defined as a not for profit association incorporated under ch. 616, F.S., for the purpose of conducting and operating public fairs or expositions.¹ Public fairs and expositions are further defined as projects, activities, events, or programs, which benefit and develop the

¹ Section 616.001(11), F.S.

educational, agricultural, horticultural, livestock, charitable, historical, civic, cultural, scientific, and other resources of Florida.² The powers of a fair association may be found in s. 616.08, F.S.

Besides the state fair in Tampa, there are approximately 50 other district, regional or county fair associations that stage annual fairs 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.³ There are approximately 50 fair and livestock shows that have scheduled events from October, 2013, through April, 2014.⁴ Forty-nine of the fair associations are members of the Florida Federation of Fairs and Livestock Shows (Federation), a Florida Non Profit Corporation whose mission is to increase the overall quality of agricultural fairs, provide members support and guidance, and educate youth and fairgoers on agriculture, trade, entertainment, and heritage of Florida.

Legislative History regarding Fair Associations

The Legislature first passed laws for the purpose of regulating state fair associations and operations in 1917.⁵ In 1974, the Legislature created the Florida State Fair Authority to deal exclusively with the staging of the annual state fair in Tampa, Florida.⁶ The statute was reviewed in 1993 under provisions of the Regulatory Sunset Act, at which time it was revised and reenacted.⁷ In 2012, legislation was enacted that:⁸

- revised the formation, charter amendments, and dissolution of fair associations;
- acknowledged that the objective of a fair association, in addition to public service, is holding, conducting and promoting public fairs and expositions;
- declared that a fair association is serving an essential government purpose if it is pursuing its legitimate purposes and that it is a noncommercial activity provider;
- expanded a fair association's exemption from taxation on its "money and property" to also include projects, activities, events, programs and uses authorized by its governing statutes, but specifically clarifying that this does not provide an exemption from any tax imposed under ch. 212, F.S.;
- expanded the activities for which fair facilities may be used to conform to actual practices;
- prohibited a fair association from conducting more than one annual public fair; and
- required that a fair permit be issued within 10 days of the permit requirements being fulfilled.

Taxation of Fair Associations

Section 4, Article VII of the Florida Constitution requires that all property be assessed at just value for ad valorem purposes. Sections 3, 4, and 6, Article VII of the Florida Constitution provide for specified assessment limitations, property classifications, and exemptions. "Just value" means fair market value; therefore, for ad valorem purposes the value of the property

² Section 616.001(12), F.S.

³ Sections 616.15 and 616.165, F.S.

⁴ DACS, *Fairs and Livestock Shows in Florida*, <http://www.freshfromflorida.com/Divisions-Offices/Marketing-and-Development/Consumer-Services/Recreation/Fairs-and-Livestock-Shows-in-Florida>. (Site last visited Mar. 7, 2014).

⁵ Chapter 7388, Laws of Fla. (1917).

⁶ Chapter 74-322, Laws of Fla.

⁷ Chapter 93-168, Laws of Fla.

⁸ Chapter 2012-204, Laws of Fla.

must be established at market value unless the Constitution has authorized, and the Legislature has implemented, an exception to the requirements. 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 as a result of the use of assets or other property of the fair association.

Stormwater Utilities

Florida cities and counties have inherent home rule authority⁹ and specific statutory authority¹⁰ to adopt stormwater regulations and to create stormwater utility systems. Construction and operation of stormwater utilities may be funded through general taxation, or through imposition of user fees and special assessments.¹¹ A user fee is lawful if imposed in proportion to the capital and operational costs attributable to the customer's impact on the entire stormwater utility, either based on the quantity of stormwater treated, or the contribution to total pollutant loading of the utility. A special assessment is lawful if it is imposed in proportion to the special benefit or value conferred on real property by the availability of the utility.

Exemptions from assessments are provided for certain users, and in addition may be granted for other users so long as the remaining users pay no more than their proportional shares. To maintain the legal integrity of a stormwater utility, the cost of any such exemption or subsidy must be funded by a source other than user fees or special assessments, such as general taxation.

⁹ Section 166.021, F.S.; *City of Miami Beach v. Forte Towers*, 305 So. 2d 764 (Fla. 1974).

¹⁰ Chapter 403, F.S.

¹¹ Section 403.0893, F.S.

Fees may be collected through a periodic billing system, and liens may be imposed for unpaid bills. Assessments may be imposed for benefits received, and may be collected annually in conjunction with ad valorem tax billings.¹²

The Florida Stormwater Association (FSA) reported that in 2011, approximately 154 local governments in Florida had established stormwater utilities pursuant to ch. 403, F.S., or their home rule powers.¹³ Day-to-day maintenance of urban stormwater management systems has been found to significantly reduce the pollutant loads that contribute to impairment of the receiving waters in the state.¹⁴

III. Effect of Proposed Changes:

Section 1 creates s. 157.37, F.S., to prohibit a county from levying a tax, special assessment, or fee related to stormwater management facilities against land owned by a fair association as defined in s. 616.001, F.S.

Sections 2 and 3 amend s. 163.31801, F.S., to prohibit a county, municipality, or special district from imposing an impact or mobility fee on a fair association as defined in s. 616.001, F.S., and applies this prohibition retroactively to any fee assessed between July 9, 2009, and July 1, 2014. The bill further requires that any such fees collected during this time period be refunded to the fair association by October 1, 2014.

Section 4 amends s. 170.01, F.S., to prohibit municipalities from levying a special assessment related to stormwater facilities against real property owned by a fair association as defined in s. 616.001, F.S., even if such real property is benefitted or increases in value due to the stormwater facilities.

Section 5 creates s. 196.1988, F.S., to exempt personal or real property owned by a fair association from ad valorem taxation, by defining it as property within the purview of art. VII, s. 3(a) of the State Constitution¹⁵ if such property is used predominately for fair purposes as described in the definition of “Public fair or exposition.”¹⁶ Any portion of such property used for nonexempt purposes may be valued and placed on the tax rolls.

Section 6 amends s. 298.305, F.S., to prohibit the board of supervisors of a water control district from levying a special assessment of a maintenance tax authorized by s. 298.54, F.S.,¹⁷ related to stormwater facilities against real property owned by a fair association as defined in s. 616.001, F.S., even if such real property is benefitted or increases in value due to the proposed work or improvement.

¹² *Id.*

¹³ FSA, *Survey of Stormwater Utilities*, <http://www.florida-stormwater.org/survey-of-stormwater-utilities> (last visited Mar. 7, 2014).

¹⁴ Berretta, Raje, and Sansalone, *Quantifying Nutrient Loads Associated with Urban Particulate Matter, and Biogenic/Litter Recovery through Current MS4 Source Control and Maintenance Practices*, University of Florida, Engineering School of Sustainable Infrastructure and Environment (May 31, 2011).

¹⁵ FLA. CONST art. VII, s. 3(a) exempts municipal property used for municipal or public purposes from ad valorem taxation.

¹⁶ Section 616.001(12), F.S.

¹⁷ Section 298.54, F.S., authorizes an annual levy on each parcel within the district to maintain and preserve ditches, drains, or other improvements apportioned upon the basis of the net assessments of benefits.

Section 7 amends s. 298.54, F.S., to state that real property owned by a fair association is exempt from a maintenance tax that the board of supervisors of a water control district is authorized to levy under this section.

Section 8 amends s. 403.0893, F.S., to exempt a fair association from any fee or assessment by a county or municipality to plan, construct, operate, use, or maintain a stormwater management system.

Section 9 sets forth legislative findings in support of the Legislature's determination and declaration that this bill fulfills an important state interest.

Section 10 provides that the bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b) of the Florida Constitution limits the Legislature when attempting to pass any general law that reduces the authority of municipalities or counties from raising revenues.¹⁸ The bill reduces the authority of cities and counties to raise revenue by creating an exemption from ad valorem taxes, impact or mobility fees, and stormwater related assessments and fees on property owned by fair associations. Accordingly, the bill may require a two-thirds vote of the membership of each house.

However, art. VII, s. 18(d) of the Florida Constitution provides an exemption if the law is determined to have an insignificant fiscal impact.¹⁹ An insignificant fiscal impact means an amount not greater than ten cents times the average statewide population for the applicable fiscal year.²⁰ The fiscal impact of the bill on local governments has not been estimated.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Supreme Court of Florida recently clarified that retroactive application of a law can be constitutionally permissible, if the Legislature expresses a clear intent that the law

¹⁸ FLA. CONST. art. VII, s. 18(b).

¹⁹ FLA. CONST. art. VII, s. 18(d).

²⁰ As of April 1, 2013, the total state population is estimated to be 19,259,543. University of Florida, Bureau of Economic and Business Research, *Florida Estimates of Population 2013* (Apr. 1, 2013), at 21.

apply retroactively, and the law is procedural or remedial in nature.²¹ Remedial statutes “operate to further a remedy or confirm rights that already exist, and a procedural law provides the means and methods for the application and enforcement of existing duties and rights.”²² A substantive law prescribes legal duties and rights. Once “those rights and duties are vested, due process prevents the Legislature from retroactively abolishing or curtailing them.”²³ Section 3 of the bill, which proposes to refund fees already collected by local governments, may be deemed as retroactive legislation, in violation of the due process provisions of the Florida Constitution.²⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill creates an exemption from stormwater management fees and special assessments, impact or mobility fees, and ad valorem taxes that would otherwise be due from fair associations. An estimate of the extent of revenue reduction incurred by local governments will not be available until the Revenue Estimating Conference (REC) has analyzed the bill. At the time this analysis was published, REC had not yet considered this bill.

B. Private Sector Impact:

Fair associations would benefit by being exempt from ad valorem taxes, impact or mobility fees, and stormwater related fees on property owned by the fair association.

C. Government Sector Impact:

The bill creates an exemption from stormwater management fees and special assessments, impact or mobility fees, and ad valorem taxes that would otherwise be due from fair associations. An estimate of the extent of revenue reduction incurred by local governments will not be available until the REC has analyzed the bill. At the time this analysis was published, REC had not yet considered this bill.

The Department of Revenue and Department of Agriculture and Consumer Services report that they expect the bill to have no impact on their operations.

VI. Technical Deficiencies:

None.

²¹ *Maronda Homes, Inc. v. Lakeview Reserve Homeowners Association, Inc.*, 127 So. 3d 1258 (2013) (Citing, *Metro. Dade Cnty. v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 499 (Fla. 1999)).

²² *Id.* See *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *City of Lakeland v. Catinella*, 129 So. 2d 133, 136 (Fla. 1961).

²³ *Id.*

²⁴ The constitutional due process rights found in Art. 1, s. 2 and 9, of the Florida Constitution protect individuals from the retroactive application of a substantive law that adversely affects or destroys a vested right; imposes or creates a new obligation or duty in connection with a previous transaction or consideration; or imposes new penalties.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.31801, 170.01, 298.305, 298.54, and 403.0893.

This bill creates Sections 157.37 and 196.1988 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.)

None.

B. Amendments:

None.