

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 316, F.S., provides for uniform traffic laws throughout the state. Specific sections of law within the chapter discuss the authority of counties and municipalities to regulate and restrict traffic on locally owned and maintained roads. Local governments are able to regulate only one activity on state and federal highways – processions or assemblages – pursuant to s. 316.008(1)(c), F.S.

As for municipal roads, chapter 316, F.S., gives local governments broad latitude for regulation. For example, s. 316.002, F.S., states that: “The Legislature recognizes that there are conditions which require municipalities to pass certain other traffic ordinances in regulation of municipal traffic that are not required to regulate the movement of traffic outside of such municipalities.”

Section 316.006(2), F.S., grants municipalities “original jurisdiction over all streets and highways located within their boundaries, except state roads...” This jurisdiction includes private roads and limited-access roads owned or controlled by special districts, if those entities enter into a written agreement with a municipality to allow municipal control.

Section 316.008, F.S., states that municipalities and counties are authorized “with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power...” to regulate 13 activities or aspects of roads and highways. This includes: regulating or prohibiting stopping, standing or parking in streets; regulating the operation of bicycles and persons on skates or other toy vehicles; and 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.

Prior to its 1973 repeal, s. 167.01, F.S., also provided that cities were authorized to regulate streets and avenues. The repealing statute, s. 166.042, F.S., contains a savings clause that specifically provides municipalities the authority to continue to exercise the regulatory power granted to them pursuant to the repealed s. 167.01, F.S.

One of the catalysts for HB 255 is the case of *Duck Tours Safari, Inc. and Land And Sea, Inc. and John Murphy vs. the City of Key West, Conch Tour Train, Inc. and Buggy Bus, Inc.*, filed in the mid-1990s. The lawsuit targeted two ordinances, passed by the City of Key West in February 1995, for two companies offering sight-seeing tours within the city. The lawsuit challenged the municipality’s authority to enact franchise ordinances granting exclusive contracts for sightseeing tours within its jurisdiction. The plaintiffs, who used restored World War II era amphibious vessels in their sight-seeing excursions, operated in Key West from approximately June 1995 through September 1996, but were not awarded a franchise and ceased operating. The plaintiffs argued that there existed no “clearly articulated or affirmatively expressed policy of the State of Florida” authorizing a city to enact franchise

ordinances. The plaintiffs alleged that the ordinances enacted by the defendants constituted actionable, anticompetitive conduct as defined in chapter 542, F.S.

The defendants responded that ss. 316.002, 316.006, and 316.008, F.S., provided sufficient authority to enact the challenged franchise ordinances. Specifically, Key West determined the amphibious vessels were too wide for the narrow city streets in the city's historic neighborhoods, and left seaweed and salt water along its route.

In April 2002, the 16th Judicial Circuit Court ruled in favor of the defendants and held that the City of Key West was statutorily authorized to enact the franchise ordinances granting exclusive contracts for sightseeing tours within its jurisdiction. The court did not address the issue of whether the franchise ordinances were in violation of chapter 542, F.S. Asked to reconsider its ruling, the court in September 2002 again ruled in favor of the defendants.

The case is on appeal.

Effect of Proposed Changes

HB 255 with CS amends s. 316.006(2), F.S., to reaffirm that municipalities may grant permits, licenses, or franchises, or may otherwise regulate, sightseeing operations on public rights-of-way within their jurisdictions. The bill also specifies that neither a municipality, nor the entities to which it has granted permits, licenses, or franchises, bear any liability under chapter 542, F.S., for the municipality's decision to regulate sightseeing activities.

A lobbyist for the City of Key West, which is supporting HB 255 with CS, has said the bill is necessary to clarify municipal authority to regulate sightseeing activities on its city streets.

HB 255 with CS takes effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1: Amends s. 316.006(2)(c), F.S., to reaffirm state intent that municipalities may grant permits, licenses, or franchises, or may otherwise regulate, sightseeing operations on public rights-of-way within their jurisdictions. Specifies that neither a municipality, nor the entities to which it has granted permits, licenses, or franchises, bear any liability under chapter 542, F.S., for the municipality's decision to regulate sightseeing activities.

Section 2: Provides that this act shall take effect upon becoming a law.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 255 with CS because the bill does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

As filed, HB 255 created broad authority of municipalities' authority to regulate commercial vehicle traffic within their boundaries. Representatives of the commercial trucking, concrete, grocery, and other delivery industries noted that the bill was too broad as drafted, and committee staff commented that legally municipalities can only regulate activities on roads they own or other manage, not all roads within their geographical boundaries. The bill sponsor agreed to an amendment that limited the bill's scope to municipal regulation of sightseeing operations within their jurisdictions, and which exempted those municipalities and their franchisees, permittees, or licensees from Chapter 542, F.S., liability.

At its March 15, 2004, meeting, the House Transportation Committee adopted the amendment without objection, and then voted 18-0 to report HB 255 favorably as a committee substitute.