

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1033 Bicycle Sharing

SPONSOR(S): Commerce Committee, Careers & 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	23 Y, 0 N, As CS	Willson	Hamon

SUMMARY ANALYSIS

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

Under Florida traffic control laws, bicycle riders are generally subject to the same rights and duties as the operators of other vehicles. Section 316.2065, F.S., provides regulations specific to the operation of bicycles in the state.

Currently, local governments may contract with and regulate bicycle sharing companies to the extent not otherwise prohibited by general law.

The bill creates s. 341.851, F.S., relating to bicycle sharing. The bill establishes minimum standards relating to the operation of bicycle sharing companies in the state.

The bill prohibits local governments from taking any action or adopting any law that is designed to limit or prevent any company engaged in the rental of bicycles from operating in its jurisdiction, as long as the company complies with the regulations governing similarly situated businesses. Additionally, the bill specifically provides that local governments are not preempted from:

- Entering into agreements with companies for the placement of docking stations on public land.
- Enforcing uniform traffic infractions pursuant to Chapter 316, F.S.

The fiscal impact on local or state government is indeterminate.

The bill takes effect upon becoming law.

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 in order to standardize traffic regulation and enforcement across the several counties and municipalities of the state. This collection of laws is known as the “Florida Uniform Traffic Control Law” (UTC) and codified in Ch. 316, F.S. 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.¹

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.²

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 traffic signs, signals, and lane markings.³ Section 316.2065, F.S., governs the operation of bicycles 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.
- A person may not knowingly rent or lease any bicycle to be ridden by a child who is under the age of 16 years unless:
 - The child possesses a bicycle helmet; or
 - The lessor provides a bicycle helmet for the child to wear.
- The failure of a person to wear a bicycle helmet or the failure of a parent or guardian to prevent a child from riding a bicycle without a bicycle helmet may not be considered evidence of negligence or contributory negligence.
- 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.
- A parent or guardian may not authorize or knowingly permit a minor child to violate these provisions.

¹ s. 316.002, F.S.; s. 316.007, F.S.

² s. 316.003(3), F.S.

³ s. 316.2065(1), F.S.

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

- 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.⁴
- 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.⁵

Bicycle sharing companies are not regulated by the state, therefore local governments may contract with and regulate bicycle sharing companies to the extent not otherwise prohibited by general law.

Bicycle Share Programs

Bicycle share programs allow users to rent bicycles within designated geographical areas. Companies offering “docked” bicycles require their bicycles to be rented from and returned to designated, unmanned docking stations, whereas “dockless” companies do not have stations located at fixed positions from where their bicycles must be rented and returned. 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.

Some 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.⁶

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.

⁴ s. 316.008(7)(a), F.S.

⁵ s. 316.0875, F.S.

⁶ See, e.g., Broward B-cycle <https://broward.bicycle.com/>; Juice Orlando Bike Share <https://juicebikeshare.com/#about>.

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.⁷ 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.⁸ Local partnership advocates believe that working closely with local government 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 exclusive, long term agreements, effectively banning any other company from operating within that jurisdiction or specific areas.⁹ These agreements 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.¹⁰

Dockless bicycle companies may 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.¹¹ 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. Additionally, some cities have experienced problems with bicycles being thrown into bodies of water, stranded in trees, on rooftops, and other undesirable places.¹²

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.¹³

⁷ 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. See 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.

⁸ *Id.*

⁹ 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>.

¹⁰ 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>.

¹¹ See Bhuiyan & Molla, *A bike-sharing war is coming to the U.S. as investors pour money into new entrants*.

¹² 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>.

¹³ 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)

Home Rule and Preemption

Counties

A county without a charter has such power of self-government as provided by general¹⁴ or special law, and may enact county ordinances not inconsistent with general law.¹⁵ General law authorizes counties “the power to carry on county government”¹⁶ 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.”¹⁷

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,¹⁸ acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.¹⁹ 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.²⁰

Municipalities

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,²¹ acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.²² 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.²³

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.²⁴ Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.²⁵ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.²⁶ In cases where the Legislature expressly or specifically preempts an area, there is no problem with

<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>.

¹⁴ ch. 125, Part I, F.S.

¹⁵ FLA. CONST. art. VIII, s. 1(f).

¹⁶ s. 125.01(1), F.S.

¹⁷ s. 125.01(1)(w), F.S.

¹⁸ s. 166.011, F.S.

¹⁹ Local Government Formation Manual 2017-2018, p. 16.

²⁰ s. 166.021(4), F.S.

²¹ s. 166.011, F.S.

²² Local Government Formation Manual at 16.

²³ s. 166.021(4), F.S.

²⁴ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

²⁵ 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).

²⁶ *Mulligan*, 934 So. 2d at 1243.

ascertaining what the Legislature intended.²⁷ 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.²⁸

Effect of the Bill

The bill creates s. 341.851, F.S., relating to bicycle sharing. The bill establishes minimum standards relating to the operation of bicycle sharing companies in the state and prohibits local governments from limiting or preventing the operation of bike-rental companies in its jurisdiction, subject to certain conditions.

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" means a bicycle as defined in s. 316.003, F.S.
- "Bicycle sharing company" means a person who makes bicycles available for immediate, self-service rental or lease at automated docking stations or through an online application, software, or website.
- "Docking station" means a bicycle rack where bicycles may be parked which is controlled by a bicycle sharing company.
- "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 bicycle through a bicycle sharing company's online application, software, or website.

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 1512.²⁹
- Prominently display the bicycle company's name or trade dress.
- Display an e-mail address or telephone number at which a user may contact the bicycle sharing company for customer support.
- Be lawfully parked when not in use.

The bill requires bicycle sharing companies, users, and operators to comply with s. 316.2065, F.S.

Bicycle Sharing Company Responsibilities

The bill requires bicycle sharing companies to:

- Register with the Division of Corporations of the Department of State, and provide such registration upon request to any local governmental entity in whose jurisdiction the company operates. A local governmental entity may issue a bicycle sharing company a fine of up to \$1,000 for failure to comply with this requirement.
- Provide its users with:

²⁷ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

²⁸ *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

²⁹ 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.

- Notification that bicycles must be operated in compliance with state and local law.
- Contact information that enables a user to notify the bicycle sharing company of an issue relating to the safety or maintenance of a bicycle.
- Maintain and rebalance each bicycle made available for rental or lease.
- Remove any bicycle that is for any reason inoperable or does not comply with the requirements of the bill.
- Secure all company bicycles located within any area of the state where an active tropical storm or hurricane warning has been issued. A local governmental entity may issue a bicycle sharing company a fine of up to \$1,000 for failure to comply with this requirement.

Preemption

The bill prohibits local governments from taking any action or adopting any law that is designed to limit or prevent any company engaged in the rental of bicycles from operating in its jurisdiction, as long as the company complies with the regulations governing similarly situated businesses. Additionally, the bill specifically provides that local governments are not preempted from:

- Entering into agreements with companies for the placement of docking stations on public land.
- Enforcing uniform traffic infractions pursuant to Chapter 316, F.S.

The bill will take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1 Creates s. 341.851, F.S., providing legislative intent; providing definitions; providing requirements for bicycles made available for rental or lease by a bicycle sharing company; requiring users or operators of such bicycles to comply with certain regulations; providing company responsibilities; authorizing a local governmental entity to issue certain fines to a bicycle sharing company; prohibiting a local governmental entity, under certain circumstances, from limiting or preventing a bicycle sharing company or any company engaged in the rental of bicycles from operating within its jurisdiction; and providing construction.

Section 2 Provides an effective date.

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:

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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 clarified and provided uniformity in the use of term "dockless bicycle sharing company" and "dockless bicycle".

On February 22, 2018, the Commerce Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Expands the definition of "bicycle sharing company" (company) to include both docked and dockless bicycle companies that make bikes available for immediate, self-service rental through an online application, software or website or at an automated docking station.
- Provides a definition for "bicycle" and "docking station".
- Removes the provisions relating to insurance requirements.
- Removes a requirement that bicycles be available for reservation 24 hours a day, 7 days a week.
- Requires companies to register with the Division of Corporations and provide proof of registration to local governments upon request, subject to a local government fine up to \$1,000.
- Requires companies to secure bicycles located in areas where a tropical storm or hurricane warning has been issued, subject to a local government fine up to \$1,000.
- Revises the preemption provision to prohibit local governments from taking any action that is designed to limit or prevent any bike-rental company from operating in its jurisdiction, as long as the company complies with the regulations governing similarly situated businesses.
- Additionally, the bill specifically provides that local governments are not preempted from:
 - Entering into agreements with companies for the placement of docking stations on public land.
 - Enforcing uniform traffic infractions pursuant to Chapter 316, F.S.
- Revises the effective date to "upon becoming law."

The bill analysis is drafted to the committee substitute as passed by the Commerce Committee.