

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 Banking and Insurance

BILL: SB 1304

INTRODUCER: Senator Young

SUBJECT: Dockless Bicycle Sharing

DATE: February 5, 2018

REVISED: _____

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

I. Summary:

SB 1304 creates a regulatory framework for dockless bicycle sharing companies operating in the state and would preempt any local governmental entity from imposing on such companies taxes or licensure requirements; a rate, entry, operation, or other requirement of the local governmental entity; or a license or other authorization to operate. The bill also prohibits local governments entering into contracts with private entities that prohibit a bicycle sharing company from operating in the local jurisdiction.

As defined in the bill, "bicycle sharing company" means an entity that makes dockless bicycles available for private use by reservation through an online application, software, or website. The bill 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 a "Local governmental entity" as a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision.

The bill provides that a person or entity may not operate a dockless bicycle sharing company in this state unless they 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. Dockless bicycles made available for reservation by a dockless bicycle sharing company must meet certain specifications. The bill requires dockless bicycle sharing companies must provide for an interface allowing for the communication of certain notifications as well as requirements relating to regular maintenance.

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

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 Share Programs

Bicycle share 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 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.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 share 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 share programs in their jurisdiction. Proponents of this approach cite the importance of such

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. 3, 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. 3, 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. 3, 2018).

partnerships in the successful implementation of bicycle share programs in local communities.⁴ 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.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 share 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

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 into bodies of water, stranded in trees, on rooftops, and other undesirable places.⁹ In China,

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 share 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. 3, 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. 3, 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. 3, 2018).

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

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. 3, 2018).

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

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

Municipalities

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

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

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 February 3, 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 s. 166.011, F.S.

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

²⁰ s. 166.021(4), F.S.

authority in that particular area.²¹ Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.²² Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.²³ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.²⁴ 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.²⁵

III. Effect of Proposed Changes:

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 bicycle sharing services within the state.

Definitions

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

- "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 bicycle sharing company's online application, software, or website.

Insurance Requirement

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.

²¹ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

²² 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).

²³ *Mulligan*, 934 So.2d at 1243.

²⁴ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

²⁵ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

Bicycle Requirements

The bill requires that dockless 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.
- Be available for reservation 24 hours a day, 7 days a week.
- Prominently display the bicycle company's trade dress.
- Display an e-mail address and telephone number at which a user may contact the 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 bicycle sharing company of an issue relating to the safety or maintenance of a dockless bicycle.

The bill specifies that a 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 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 bicycle sharing company relating to reserving a dockless bicycle;
- subjecting a dockless bicycle or a bicycle sharing company to any rate, entry, operation, or other requirement;
- requiring a 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 bicycle sharing company from operating within the jurisdiction of the local governmental entity or that limits the operation of a 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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent that this bill reduces the ability of a county or municipality to raise revenue, the mandates provision of Art. VII, s. 18 of the Florida Constitution may apply. However, as a mandate analysis is based on revenue reduced in the aggregate, the fiscal impact is expected to be insignificant unless bicycle sharing companies operate in such a way as to create significant local costs.

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 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.

The bill requires dockless bicycles be available for reservations 24 hours a day, 7 days a week. This may alter the business operations of bicycle sharing companies that only receive reservations at certain times.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill creates statewide requirements for bicycle sharing companies, but does not contain provisions for the enforcement of these requirements. The bill states that dockless bicycle sharing companies and dockless bicycles shall be governed exclusively by state law. No state agency is tasked with ensuring compliance and the bill does not impose penalties for noncompliance.

VII. Related Issues:

The bill does not address s. 316.2065(15)(a) F.S., which prohibits renting or leasing any bicycle to a child under 16 years of age unless the child possesses or is provided with a bicycle helmet.

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.)

None.

B. Amendments:

None.