

**Lee County Board Of County Commissioners  
Agenda Item Summary**

**Blue Sheet No. 20061222**

**1. ACTION REQUESTED/PURPOSE:** Approve a Lee County Resolution exempting the County from Section 316.2123, Florida Statutes, which permits operation of all-terrain vehicles (ATV's) during the daytime on unpaved roadways where the posted speed limit is less than thirty-five miles per hour (35 MPH).

**2. WHAT ACTION ACCOMPLISHES:** Approval of the Lee County Resolution will exempt Lee County from Section 316.2123, Florida Statutes which will become effective October 1, 2006, per its terms.

**3. MANAGEMENT RECOMMENDATION:** Approve the Lee County Resolution exempting the County from Section 316.2123, Florida Statutes.

**4. Departmental Category:** 9:30 AM PH 2 **5. Meeting Date:** Sept. 26, 2006

<b>6. Agenda:</b> <input type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input checked="" type="checkbox"/> Public <u>9:30</u> <input type="checkbox"/> Walk-On	<b>7. Requirement/Purpose: (specify)</b>		<b>8. Request Initiated:</b> <b>Commissioner</b> <b>Department</b> <u>County Attorney</u> <b>Division</b> <u>General Services</u> <b>By:</b> <u>Andrea R. Fraser, Chief</u> <u>Assistant County Attorney</u>
	<input checked="" type="checkbox"/> Statute	<u>316.2123</u>	
	<input type="checkbox"/> Ordinance		
	<input type="checkbox"/> Admin. Code		
	<input type="checkbox"/> Other		

**9. Background:**

Board direction was given to staff on September 11, 2006, at the Management and Planning Meeting to Blue Sheet the issue of all-terrain vehicles (ATV's) with regards to the implementation of Section 316.2123, Florida Statutes, before October 1, 2006.

On October 1, 2006, Section 316.2123 (1), Florida Statutes will take effect, permitting the operation of all-terrain vehicles (ATV's) upon unpaved roadways where the posted speed limit is less than thirty-five miles per hour (35 MPH) by a licensed driver or by a minor under the supervision of a licensed driver.

Section 316.2123 (2), Florida Statutes, exempts counties from the section if the governing body of the county, by majority vote following a noticed public hearing, votes to exempt the county from Section 316.2123, Florida Statutes.

ATTACHMENT: Lee County Resolution Notice of Intent

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
				<i>Andrea Fraser</i>	<u>RK 9/13</u>	<u>MP 9/13/06</u>	<u>9/13/06</u>	<u>9/13/06</u>	<i>[Signature]</i>

**11. Commission Action:**

Approved  
 Deferred  
 Denied  
 Other

CO. ATTY.  
FORWARDED TO:  
Admin 9/13/06

RECEIVED BY  
COUNTY ADMIN: [Signature]  
9/13/06 11:55 MP  
COUNTY ADMIN  
FORWARDED TO:

LEE COUNTY RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF LEE COUNTY, FLORIDA, FOR THE PURPOSE OF EXEMPTING LEE COUNTY FROM SECTION 316.2123, FLORIDA STATUTES, PERMITTING OPERATION OF ALL-TERRAIN VEHICLES (ATV'S) DURING THE DAYTIME ON UNPAVED ROADWAYS WHERE THE POSTED SPEED LIMIT IS LESS THAN THIRTY-FIVE MILES PER HOUR (35 MPH); PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on October 1, 2006, Florida Statutes, Section 316.2123 (1), will take effect, permitting the operation of all-terrain vehicles (ATV's) upon unpaved roadways where the posted speed limit is less than thirty-five miles per hour (35 MPH) by a licensed driver or by a minor under the supervision of a licensed driver; and

**WHEREAS**, Section 316.2123 (2), Florida Statutes, exempts counties from the section if the governing body of the county, by majority vote, following a noticed public hearing, votes to exempt the county from Section 316.2123, Florida Statutes; and

**WHEREAS**, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision and charter County of the State of Florida; and

**WHEREAS**, it is the intent of Lee County to exercise its authority under Section 316.2123 (2), Florida Statutes, and exempt Lee County from Section 316.2123 (1), Florida Statutes, effective October 1, 2006.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AS FOLLOWS:

**SECTION 1.**            **EXEMPTION FROM IMPLEMENTATION OF SECTION 316.2123, FLORIDA STATUTES**

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- A. Lee County hereby acknowledges that on October 1, 2006, Section 316.2123 (1), Florida Statutes will go into effect without any formal action by Lee County.
- B. Section 316.2123 (2), Florida Statutes, provides that in order for a county to be exempt from Section 316.2123, Florida Statutes, a governing body of the county by majority vote, following a noticed public hearing, may exempt the county from this Section. In accordance with this authority, Lee County hereby elects to adopt this Resolution, exempting itself from Florida Statutes, Section 316.2123 (1). Likewise, Lee County hereby declares that this Resolution constitute its official notice of its exemption from Section 316.2123 (1), Florida Statutes.
- C. Beginning October 1, 2006, Lee County hereby invokes its authority in accordance with Section 316.2123 (2), Florida Statutes.

**SECTION 2.**            **REPEAL OF CONFLICTING RESOLUTIONS**

All Ordinances or parts of Ordinances, and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 3.           SEVERABILITY**

The provisions of this Resolution are declared to be severable and if any section, sentence, clause or phrase of this Resolution shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Resolution but shall remain in effect, it being the legislative intent that this Resolution shall stand notwithstanding the invalidity of any part.

**SECTION 4.           EFFECTIVE DATE**

This Resolution shall become effective as of October 1, 2006.

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The foregoing Resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and, upon being put to a vote as follows:

BOB JANES \_\_\_\_\_  
DOUGLAS ST. CERNY \_\_\_\_\_  
RAY JUDAH \_\_\_\_\_  
TAMMARA HALL \_\_\_\_\_  
JOHN E. ALBION \_\_\_\_\_

DULY PASSED AND ADOPTED THIS **26th** day of **August, 2006**.

ATTEST: CHARLIE GREEN  
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Tammara Hall, Chairwoman

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Office of the County Attorney

LEE COUNTY  
NOTICE OF INTENT TO ENACT A COUNTY RESOLUTION

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that on **Tuesday**, the **26th** day of **September, 2006**, at **9:30 o'clock, a.m.**, in the County Commissioners' Meeting Room, Old Lee County Courthouse, 2120 Main Street, Fort Myers, Florida, the Board of County Commissioners of Lee County, Florida, will consider the enactment of a County Resolution pursuant to Chapter 125, Florida Statutes. The title of the proposed County Resolution is as follows:

**A RESOLUTION OF LEE COUNTY, FLORIDA, FOR THE PURPOSE OF EXEMPTING LEE COUNTY FROM SECTION 316.2123, FLORIDA STATUTES, PERMITTING OPERATION OF ALL-TERRAIN VEHICLES (ATV'S) DURING THE DAYTIME ON UNPAVED ROADWAYS WHERE THE POSTED SPEED LIMIT IS LESS THAN THIRTY-FIVE MILES PER HOUR (35 MPH); PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

1. Copies of this Notice and the proposed Resolution are on file in the Minutes Office of the Clerk of Courts of Lee County. The public may inspect or copy the Resolution during regular business hours at the Office of Public Resources. The Minutes Office and Public Resources are located in the Courthouse Administration Building, 2115 Second Street, Fort Myers, Florida. Public Resources is located on the first floor and the Minutes Office is located on the second floor of the Courthouse Administration Building.

2. Interested parties may appear at the meeting in person or through counsel, and be heard with respect to the adoption of the proposed Resolution.

3. Anyone wishing to appeal the decision(s) made by the Board with respect to any matter considered at this meeting, will need a record of the proceedings for such

appeal, and may need a verbatim record, to include all testimony and evidence upon which the appeal is to be based.

4. The Resolution shall take effect immediately upon its adoption by the Board of County Commissioners at the public hearing.

5. If you have a disability that will require special assistance or accommodations for your attendance at the public hearing, please call the Lee County Division of Public Resources at 335-2269 for information.

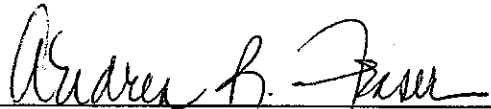
PLEASE GOVERN YOURSELF ACCORDINGLY.

The text of this Notice is in conformance with Section 125.66, Florida Statutes (2005), and other relevant sections of Florida law.

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Charlie Green, Ex-Officio Clerk  
to the Board of County Commissioners  
of Lee County, Florida

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
Office of the County Attorney

Ad Size: 2 X 5

Publishing Dates: September 19, 2006  
September 25, 2006