TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 267 by Rep. Roach
State Preemption of Seaport Regulations

AMENDMENT SUMMARY
March 3, 2021

Amendment 1 by Rep. Roach (445437):

- Replaces “Notwithstanding any other law to the contrary” with “Except as authorized by general law”.

Amendment 2 by Rep. Roth (571249):

- Narrows the scope of the bill to only preempt the regulation of seaports by municipal governments.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Tourism, Infrastructure & Energy Subcommittee

Representative Roth offered the following:

Amendment

Remove lines 37-93 and insert:

WHEREAS, allowing each municipal government in which a Florida seaport is located to impose its own requirements on the maritime commerce conducted in that port could result in abrupt changes in the supply lines bringing goods into and out of this state, thus disrupting Florida's economy and threatening the public's health, safety, and welfare, and

WHEREAS, allowing each municipal government in which a Florida seaport is located to impose its own requirements on the maritime commerce conducted in that port could reasonably be expected to suppress such commerce and potentially drive it out

of the port and out of the state in search of a more consistent and predictable operating environment, thus disrupting Florida's economy and threatening the public's health, safety, and welfare, and

WHEREAS, allowing each municipal government in which a Florida seaport is located to impose its own requirements on the maritime commerce conducted in that port could result in abrupt changes in vessel traffic, frustrating the multi-year planning process for all Florida seaports and the assumptions and forecasts underlying federal and state financing of port improvement projects, and

WHEREAS, in light of these negative impacts, federal and state governments must be relied upon to adopt uniform regulations governing seaport operations, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 311.25, Florida Statutes, is created to read:

311.25 Regulation of commerce in Florida seaports; preemption.—

(1) Notwithstanding any other law to the contrary, a municipal government may not restrict or regulate commerce in the seaports of this state, as listed in s. 311.09, including, but not limited to, regulating or restricting a vessel's type or

size, source or type of cargo, or number, origin, or nationality of passengers. All such matters are expressly preempted to the state.

(2) If not otherwise preempted by federal or state law, this section does not limit the authority of a port authority or port district, as defined in s. 315.02, or a port operation as provided in s. 125.012, to:

(a) Regulate vessel movements within its jurisdiction pursuant to s. 313.22(1).

(b) Establish fees and compensation for its services pursuant to s. 313.22(2).

(c) Adopt guidelines for minimum bottom clearance, for the movement of vessels, and for radio communications of vessel traffic pursuant to s. 313.23.

However, an action provided in this subsection may not have the effect of regulating or restricting a vessel's type or size, source or type of cargo, or number, origin, or nationality of passengers, except as required to ensure safety due to the physical limitations of channels, berths, anchorages, or other port facilities.

Section 2. Any provision of a municipal charter,

unserved[25] and underserved[26] areas of the state. The Office must administer and act as fiscal agent for the Program and is responsible for receiving and reviewing applications and awarding grants. Funding for the Program comes from a reallocation 50 percent of the funds from the increased revenues to the STTF derived from the M-CORES Program, for fiscal years 2021-2022 and each fiscal year thereafter. Prior to M-CORES, these funds were allocated to the General Revenue Fund from motor vehicle license taxes.[27] The bill transfers these funds to the State Economic Enhancement and Economi

- The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

Within three business days after the submission of a written challenge, the Office must notify the applicant, in writing, of the challenge.

The Office must evaluate each challenge. If the Office determines that the provider currently provides, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the office may not fund the challenged project.

If the Office denies funding to an applicant as a result of a broadband Internet service provider's challenge and the provider ultimately does not fulfill its commitment to provide broadband Internet service in the unserved or underserved area, the Office may not consider another challenge from the provider for the next grant cycle, unless the Office determines the failure to fulfill the commitment was due to circumstances beyond provider's control.

In evaluating grant applications and awarding grants, the Office must prioritize applications proposing to serve areas identified by the Office as unserved.

In evaluating grant applications and awarding grants, the Office may prioritize applications that:

- Propose to serve areas identified by the Office as underserved;
- Offer new or substantially upgraded broadband Internet service to important community institutions including libraries, educational institutions, public safety facilities, and healthcare facilities;
- Facilitate the use of telemedicine and electronic health records;
- Serve economically distressed areas of the state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;
- Provide for scalability to transmission speeds of at least 100 megabits per second download and 10 megabits per second upload;
- Include a component to actively promote the adoption of the newly available broadband Internet services in the community;
- Provide evidence of strong support for the project from citizens, government, businesses, and institutions in the community;
- Provide access to broadband Internet service to the greatest number of unserved or underserved households and businesses;
- Leverage greater amounts of funding for the project from other private and public sources; or
- Demonstrate consistency with the Office's strategic plan.[29]

The Office must endeavor to award grants to qualified applicants in all regions of the state. The Office may not award any grant to an otherwise eligible grant applicant to provide broadband Internet service in a project area for which any other federal funding has been awarded.

A grant may not be used to serve any retail end user that already has access to broadband Internet service. A grant, when combined with any other state or local funds, may not fund more than 50 percent of the total cost of a project. A single project may not be awarded a grant in excess of $5 million.

For each grant awarded, the Office must enter into an agreement with the applicant. The agreement must specify the total amount of the grant, performance conditions that must be met to obtain the grant, the schedule of payment, and sanctions that would apply for failure to meet performance conditions, including, but not limited to, requiring the return of grant funds.

[29] The Office has yet to issue its strategic plan.

By January 1, 2023, and each year thereafter, the Office must publish on its website and provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives:

- A list of all grant applications received during the previous year and for each application:
  - The results of any quantitative weighting or scoring system the Office used to award grants or rank the applications.
  - The grant amount requested.
  - The grant amount awarded, if any.
  - A report on the progress of each grant recipient in acquiring and installing infrastructure that supports the provision of broadband Internet service in the project areas for which the grant was awarded and in securing adoption of such service in each project area.
- All written challenges during the previous year.

The bill amends s. 364.0135, F.S., to define terms, incorporate unserved areas in the list of project priorities, authorize the Office to administer the Program, and grant the Office rulemaking authority relating to the administration of Office and the Program.

The bill amends s. 339.0801, F.S., to require DOT to consult with the Office to ensure that DOT's broadband infrastructure projects are consistent with Office's strategic plan.

The bill amends s. 364.02, F.S., to provide that the definition of "broadband service" as it relates to the regulation of telecommunications service by the Public Service Commission, does not apply to statutory provisions in ch. 364, F.S., relating to the Office.

B. SECTION DIRECTORY:

Section 1 Amends s. 338.2278, F.S., relating to the Multi-Use Corridors of Regional Economic Significance Program.

Section 2 Amends s. 339.0801, F.S., relating to the allocation of increased revenues derived from amendments to s. 319.32(5)(a), F.S., by Ch. 2012.128, L.O.F.

Section 3 Amends s. 364.02, F.S., providing definitions.

Section 4 Amends s. 364.0135, F.S., relating to the promotion of broadband adoption and the Florida Office of Broadband.

Section 5 Creates s. 364.0136, F.S., creating the Broadband Opportunity Program.

Section 6 Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the Program leads to the deployment of broadband Internet service, this may result in increased economic activity in areas not served by adequate or any broadband Internet service.

Broadband Internet providers may see an increase in revenues associated with grants promoting the deployment of broadband Internet service.

The reallocation of funds from the STTF to DEO may cause a delay in some DOT transportation projects associated with M-CORES, which are included in DOT's work program.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has yet to evaluate this bill; however, based upon 2019 information from the creation of M-CORES, the bill transfers approximately $66.3 million in revenue from the State Transportation Trust Fund at DOT to DEO for the Program and a similar amount in future fiscal years.[30]

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 expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DEO to adopt rules regarding the administration of the Office and the Broadband Opportunity Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[30] Florida House of Representatives, 2019 House Bill 7113 Final Bill Analysis. P. 17.

A bill to be entitled

An act relating to broadband Internet deployment; amending s. 338.2278, F.S.; providing for the transfer of certain funds from the State Transportation Trust Fund to the State Economic Enhancement and Economic Development Trust Fund within the Department of Economic Opportunity; providing for the use of such funds by the Florida Office of Broadband; amending s. 339.0801, F.S.; requiring the Department of Transportation to consult with the Florida Office of Broadband to ensure specified projects are consistent with a strategic plan; amending s. 364.02, F.S.; providing an exception to the definition of the term "broadband service" for certain purposes; amending s. 364.0135, F.S.; adding a cross-reference; revising and providing definitions related to broadband service; revising duties of the Florida Office of Broadband; providing rulemaking authority; creating s. 364.0136, F.S.; establishing the Broadband Opportunity Program within the Florida Office of Broadband in the Department of Economic Opportunity; providing for administration of the program; providing requirements for grant awards; providing for eligibility; providing application requirements; requiring the publication of certain information related to grant applications and

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grant awards on a website; authorizing grant applications to be challenged under certain circumstances; providing procedures for use by the office in evaluating challenges; providing direction for the office in prioritizing funding grants; providing a limit on the amount of individual grants; requiring grant agreements to contain specified conditions; requiring the office to enter into an agreement containing specified information with each grant recipient; requiring the office to publish a specified report annually on its website; requiring a report to the Governor and Legislature with specified information; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 338.2278, Florida Statutes, is amended to read:

338.2278 Multi-use Corridors of Regional Economic Significance Program.—

(7) Funds that result from increased revenues to the State Transportation Trust Fund derived from the amendments to s. 320.08 made by chapter 2019-43, Laws of Florida, ~~this act~~ and deposited into the fund pursuant to s. 320.20(5)(a) must be used

as follows:

(a) ~~For the 2019-2020 fiscal year, $45 million shall be retained in the State Transportation Trust Fund, and the remaining funds shall be transferred to the General Revenue Fund.~~

~~(b)~~ For the 2020-2021 fiscal year, $90 million shall be retained in the State Transportation Trust Fund, and the remaining funds shall be transferred to the General Revenue Fund.

(b)~~(c)~~ For the 2021-2022 fiscal year and each fiscal year thereafter, 50 percent of the funds shall be transferred to the State Economic Enhancement and Economic Development Trust Fund within the Department of Economic Opportunity for use by the Florida Office of Broadband as provided in s. 364.0136, and ~~all of~~ the remaining funds shall be retained in the State Transportation Trust Fund.

Section 2. Subsection (2) of section 339.0801, Florida Statutes, is amended to read:

339.0801 Allocation of increased revenues derived from amendments to s. 319.32(5)(a) by ch. 2012-128.—Funds that result from increased revenues to the State Transportation Trust Fund derived from the amendments to s. 319.32(5)(a) made by chapter 2012-128, Laws of Florida ~~this act~~ must be used annually, first as set forth in subsection (1) and then as set forth in subsections (2)-(5), notwithstanding any other provision of law:

(2)(a) For each of the 2019-2020, 2020-2021, and 2021-2022 fiscal years, $35 million shall be transferred to Florida's Turnpike Enterprise, to be used in accordance with Florida Turnpike Enterprise Law, to the maximum extent feasible for feeder roads, structures, interchanges, appurtenances, and other rights to create or facilitate access to the existing turnpike system.

(b) Beginning with the 2022-2023 fiscal year and annually thereafter, $35 million shall be transferred to Florida's Turnpike Enterprise, to be used in accordance with s. 338.2278, with preference to feeder roads, interchanges, and appurtenances that create or facilitate multiuse corridor access and connectivity. Of those funds, and to the maximum extent feasible, up to $5 million annually may be used for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor. The department shall give priority consideration to broadband infrastructure projects located in any area designated as a rural area of opportunity under s. 288.0656 and adjacent to a multiuse corridor. The department shall consult with the Florida Office of Broadband within the Department of Economic Opportunity to ensure that the broadband infrastructure projects are consistent with the strategic plan required by s. 364.0135.

Section 3. Subsection (2) of section 364.02, Florida Statutes, is amended to read:

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364.02 Definitions.—As used in this chapter, the term:

(2) "Broadband service", except when used in ss. 364.0135 and 364.0136, means any service that consists of or includes the offering of the capability to transmit or receive information at a rate that is not less than 200 kilobits per second and either:

(a) Is used to provide access to the Internet; or

(b) Provides computer processing, information storage, information content, or protocol conversion in combination with the service.

The definition of broadband service does not include any intrastate telecommunications services that have been tariffed with the commission on or before January 1, 2005.

Section 4. Subsection (2) and paragraph (c) of subsection (4) of section 364.0135, Florida Statutes, are amended and paragraph (e) is added to subsection (4) and paragraph (d) is added to subsection (5) of that section, to read:

364.0135 Promotion of broadband adoption; Florida Office of Broadband.—

(2) DEFINITIONS.—As used in this section and s. 364.0136, the term:

(a) "Broadband Internet service" means any service that provides access to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second download and 3 megabits per second upload.

(b) ~~(a)~~ "Department" means the Department of Economic Opportunity.

(c) ~~(b)~~ "Office" means the Florida Office of Broadband.

(d) ~~(c)~~ "Sustainable adoption" means the ability for communications service providers to offer broadband Internet services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

(e) ~~(d)~~ "Underserved" means a geographic area of the state without access to Internet service with a connection speed of at least 25 megabits per second download and 3 megabits per second upload ~~in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 megabits per second downstream and at least 1 megabit per second upstream~~.

(f) "Unserved" means a geographic area of the state without access to Internet service with a connection speed of at least 10 megabits per second download and 1 megabit per second upload.

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in the state. The office, in the performance of its duties, shall do

all of the following:

(c) Encourage the use of broadband Internet service, especially in the rural, unserved, or underserved communities of the state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband in primarily unserved and underserved areas by removing barriers to entry.

3. Work toward encouraging investments in establishing affordable and sustainable broadband Internet service in unserved and underserved areas of the state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in the state.

(e) Administer the Broadband Opportunity Program established in s. 364.0136.

(5) ADMINISTRATION.—The department may:

(d) Adopt rules to implement this section and s. 364.0136.

Section 5. Section 364.0136, Florida Statutes, is created to read:

364.0136 Broadband Opportunity Program.—

(1) The Broadband Opportunity Program is established within the office to award grants to applicants who seek to expand access to broadband Internet service in unserved and underserved areas of the state. The office must administer and act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding grants. Funding for the program shall be as provided in s. 338.2278(7)(c).

(2) Grants awarded under this section shall fund the installation and deployment of infrastructure that supports the provision of broadband Internet service.

(3) Applicants eligible for grant awards include:

(a) Corporations, nonprofit corporations, limited liability companies, general partnerships, and limited partnerships, that are organized under the laws of the state or otherwise authorized to transact business in the state.

(b) Political subdivisions.

(c) Rural electric cooperatives organized under chapter 425 and their broadband affiliates.

(d) Indian tribes.

(4) An eligible applicant shall submit a grant application to the office on a form prescribed by the office. A grant

application must include the following information:

(a) A description of the project area.

(b) A description of the kind and amount of broadband Internet service infrastructure that is proposed to be deployed.

(c) Evidence demonstrating the unserved or underserved nature of the project area.

(d) The number of households and businesses that would have new access to broadband Internet service, or that would have upgraded broadband Internet service as a result of the grant.

(e) A list of significant community institutions that would benefit from the grant.

(f) The total cost of the project and the timeframe in which it would be completed.

(g) A list identifying sources of funding or in-kind contributions that would supplement any awarded grant.

(h) Any other information required by the office.

(5)(a) At least 30 days before the first day grant applications may be submitted each fiscal year, the office shall publish on its website the specific criteria and quantitative scoring system it will use to evaluate or rank applications and award grants under subsection (6). Such criteria and quantitative scoring system must include the criteria set forth in subsection (6).

(b) Within 3 business days after the close of the grant

application process, the office shall publish on its website, from each application submitted, the proposed unserved and underserved areas to be served and the proposed broadband Internet speeds of the areas to be served.

(c) A broadband Internet service provider that provides existing service in or adjacent to a proposed project area may submit to the office, within 45 days after publication of the information under paragraph (b), a written challenge to an application. The challenge shall contain information demonstrating that:

1. The provider currently provides broadband Internet service to retail customers within the proposed project area;

2. The provider has begun construction to provide broadband Internet service to retail customers within the proposed project area; or

3. The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

(d) Within 3 business days after the submission of a written challenge, the office shall notify the applicant, in writing, of the challenge.

(e) The office shall evaluate each challenge submitted under this subsection. If the office determines that the provider currently provides, has begun construction to provide, or commits to provide broadband internet service in the proposed

project area, the office may not fund the challenged project.

(f) If the office denies funding to an applicant as a result of a broadband Internet service provider's challenge and the provider does not fulfill its commitment to provide broadband Internet service in the unserved or underserved area, the office may not consider another challenge from the provider for the next cycle, unless the office determines the failure to fulfill the commitment was due to circumstances beyond provider's control.

(6)(a) In evaluating grant applications and awarding grants, the office must give priority to applications proposing to serve areas identified by the office as unserved.

(b) In evaluating grant applications and awarding grants, the office may give priority to applications that:

1. Proposed to serve areas identified by the office as underserved;

2. Offer new or substantially upgraded broadband Internet service to important community institutions including, but not limited to, libraries, educational institutions, public safety facilities, and healthcare facilities;

3. Facilitate the use of telemedicine and electronic health records;

4. Serve economically distressed areas of the state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;

5. Provide for scalability to transmission speeds of at least 100 megabits per second download and 10 megabits per second upload;

6. Include a component to actively promote the adoption of the newly available broadband Internet services in the community;

7. Provide evidence of strong support for the project from citizens, government, businesses, and institutions in the community;

8. Provide access to broadband Internet service to the greatest number of unserved or underserved households and businesses;

9. Leverage greater amounts of funding for the project from other private and public sources; or

10. Demonstrate consistency with the strategic plan adopted under s. 364.0135.

(c) The office must endeavor to award grants to qualified applicants in all regions of the state.

(7)(a) The office may not award any grant to an otherwise eligible grant applicant to provide broadband Internet service in a project area for which any other federal funding has been awarded.

(b) A grant awarded under this section may not be used to serve any retail end user that already has access to broadband Internet service.

(c) A grant awarded under this section, when combined with any state or local funds, may not fund more than 50 percent of the total cost of a project.

(d) A single project may not be awarded a grant in excess of $5 million.

(8) For each grant awarded, the office shall enter into an agreement with applicant. The agreement must specify the total amount of the grant, performance conditions that must be met to obtain the grant, the schedule of payment, and sanctions that would apply for failure to meet performance conditions, including, but not limited to, requiring the return of grant funds.

(9) By January 1, 2023, and each year thereafter, the office shall publish on its website and provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives:

(a) A list of all grant applications received during the previous year and for each application:

1. The results of any quantitative weighting or scoring system the office used to award grants or rank the applications.

2. The grant amount requested.

3. The grant amount awarded, if any.

4. A report on the progress of each grant recipient in acquiring and installing infrastructure that supports the provision of broadband Internet service in the project areas for

which the grant was awarded and in securing adoption of such service in each project area.

(b) All written challenges during the previous year.

Section 6. This act shall take effect July 1, 2021.

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TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 753 by Rep. Clemons
BROADBAND INTERNET DEPLOYMENT

AMENDMENT SUMMARY
MARCH 3, 2021

Amendment 1 by Rep. Clemons (# 269581)

- Creates a new part of chapter 288, F.S., and moves the following into this new part:
  - The existing statutory section related to the Florida Office of Broadband.
  - The provisions of the bill that create the Broadband Opportunity Program.
- Adds the new term "deployed," for purposes of determining whether or not broadband Internet service is already available in a specific geographic area.
- Eliminates the term "underserved" but retains the term "unserved" to refer to any area without access to broadband Internet service.
- Prohibits state funds from being used to provide service to places where service has already been deployed from at least one provider.
- Prohibits grants being awarded to governmental entities, rural electric cooperatives, or educational institutions unless other broadband Internet service providers have not deployed services to an unserved area.
- Expands from one grant cycle to two grant cycles that the Office of Broadband may not consider another challenge from a provider if it does not fulfill its commitment to provide broadband Internet service.
- Makes other technical and conforming changes.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Tourism, Infrastructure & Energy Subcommittee

Representative Clemons offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Part XV of chapter 288, Florida Statutes, consisting of sections 288.9961 and 288.9962 is created and entitled "Florida Office of Broadband."

Section 2. Section 364.0135, Florida Statutes, is renumbered as s. 288.9961, Florida Statutes, and amended to read:

288.9961 ~~364.0135~~ Promotion of broadband adoption; Florida Office of Broadband.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that the sustainable adoption of broadband Internet service is critical

to the economic and business development of this ~~the~~ state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations.

(2) DEFINITIONS.—As used in this part ~~section~~, the term:

(a) "Broadband Internet service" means any service that provides access to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second download and 3 megabits per second upload.

(b) ~~(a)~~ "Department" means the Department of Economic Opportunity.

(c) "Deployed" means that a provider meets either of the following:

1. Currently provides broadband Internet service in a specific geographic area; or

2. Is able to provide broadband Internet service in a specific geographic area to a customer that requests that service not later than 30 days after the customer requests installation of that service and without an extraordinary commitment of resources or construction charges or fees exceeding an ordinary service activation fee. The 30-day time period shall be extended to 60 days if permits are needed before the broadband Internet service is installed and activated.

(d) ~~(b)~~ "Office" means the Florida Office of Broadband.

(e) ~~(c)~~ "Sustainable adoption" means the ability for communications service providers to offer broadband Internet

services in all areas of this ~~the~~ state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

~~(d) "Underserved" means a geographic area of the state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 megabits per second downstream and at least 1 megabit per second upstream.~~

(f) "Unserved" means a geographic area of the state where broadband Internet service is not deployed.

(3) STATE AGENCY.—The department is designated as the lead state agency to facilitate the expansion of broadband Internet service in this ~~the~~ state. The department shall work collaboratively with private businesses and receive staffing support and other resources from Enterprise Florida, Inc., state agencies, local governments, and community organizations.

(4) FLORIDA OFFICE OF BROADBAND.—The Florida Office of Broadband is created within the Division of Community Development in the department for the purpose of developing, marketing, and promoting broadband Internet services in this ~~the~~ state. The office, in the performance of its duties, shall do all of the following:

(a) Create a strategic plan that has goals and strategies for increasing the use of broadband Internet service in this ~~the~~

state. The plan must include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state.

(b) Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community, which may include, but are not limited to, representatives from the following organizations and industries: libraries, K-12 education, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture.

(c) Encourage the use of broadband Internet service, especially in the rural or~~,~~ unserved~~, or underserved~~ communities of the state through grant programs having effective strategies to facilitate the statewide deployment of broadband Internet service. For any grants to be awarded, priority must be given to projects that:

1. Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community support organizations.

2. Encourage the sustainable adoption of broadband Internet service in primarily unserved ~~underserved~~ areas by removing barriers to entry.

3. Work toward encouraging investments in establishing

affordable and sustainable broadband Internet service in unserved ~~underserved~~ areas of this ~~the~~ state.

4. Facilitate the development of applications, programs, and services, including, but not limited to, telework, telemedicine, and e-learning to increase the usage of, and demand for, broadband Internet service in this ~~the~~ state.

(d) Monitor, participate in, and provide input in proceedings of the Federal Communications Commission and other federal agencies related to the geographic availability and deployment of broadband Internet service in the state as necessary to ensure that this information is accurately presented and that rural or~~,~~ unserved~~, and underserved~~ areas of the state are best positioned to benefit from federal and state broadband deployment programs.

(e) Administer the Broadband Opportunity Program established in s. 288.9962.

(5) ADMINISTRATION.—The department may:

(a) Apply for and accept federal funds for purposes of this section.

(b) Enter into contracts necessary or useful to carry out the purposes of this section.

(c) Establish any committee or workgroup to administer and carry out the purposes of this section.

(d) Adopt rules to implement this part.

Section 3. Section 288.9962, Florida Statutes, is created

to read:

288.9962 Broadband Opportunity Program.—

(1) The Broadband Opportunity Program is established within the office to award grants to applicants who seek to expand broadband Internet service to unserved areas of this state. The office must administer and act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding grants. Funding for the program shall be as provided in s. 338.2278(7)(c), F.S.

(2) Grants awarded under this section shall fund the installation or deployment of infrastructure that supports the provision of broadband Internet service. State funds may not be used to provide broadband Internet service to a geographic area where broadband Internet service is already deployed by at least one provider.

(3) Applicants eligible for grant awards include:

(a) Corporations, nonprofit corporations, limited liability companies, general partnerships, and limited partnerships that are organized under the laws of this state or otherwise authorized to transact business in this state.

(b) Political subdivisions.

(c) Rural electric cooperatives organized under chapter 425 and their broadband affiliates.

(d) Indian Tribes.

(4) The office may not award, directly or indirectly,

grants under this section to a governmental entity, a rural electric cooperative or affiliate, or educational institution or affiliate to provide Broadband Internet service to any residential or commercial premises, unless other broadband Internet service providers have not deployed service to an unserved area.

(5) An eligible applicant shall submit a grant application to the office on a form prescribed by the office. A grant application must include the following information:

(a) A description of the project area.

(b) A description of the kind and amount of broadband Internet service infrastructure that is proposed.

(c) Evidence demonstrating the unserved nature of the project area.

(d) The number of households and businesses that would have access to broadband Internet service as a result of the grant.

(e) A list of significant community institutions that would benefit from the grant.

(f) The total cost of the project and the timeframe in which it would be completed.

(g) A list identifying sources of funding or in-kind contributions that would supplement any awarded grant.

(h) Any other information required by the office.

(6)(a) At least 30 days before the first day grant

applications may be submitted each fiscal year, the office shall publish on its website the specific criteria and quantitative scoring system it will use to evaluate or rank grant applications. Such criteria and quantitative scoring system must include the criteria set forth in subsection (8).

(b) Within 3 business days after the close of the grant application process, the office shall publish on its website, from each grant application submitted, the proposed unserved areas to be served and the proposed broadband Internet speeds of the areas to be served.

(c) A broadband Internet service provider that provides existing service in or adjacent to a proposed project area may submit to the office, within 45 days after publication of the information under paragraph (b), a written challenge to an application. The challenge shall contain information demonstrating that:

1. The provider currently has deployed broadband Internet service to retail customers within the project area;

2. The provider has begun construction to provide broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant; or

3. The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

(d) Within 3 business days after the submission of a written challenge, the office shall notify the applicant, in writing, of the challenge.

(e) The office shall evaluate each challenge submitted under this subsection. If the office determines that the provider currently has deployed, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the office may not fund the challenged project.

(f) If the office denies funding to an applicant as a result of a broadband Internet service provider's challenge and the provider does not fulfill its commitment to provide broadband Internet service in the unserved area, the office may not consider another challenge from the provider for the next two grant cycles, unless the office determines that the failure to fulfill the commitment was due to circumstances beyond the provider's control.

(8)(a) In evaluating grant applications and awarding grants, the office must give priority to applications that:

1. Offer broadband Internet service to important community institutions including, but not limited to, libraries, educational institutions, public safety facilities, and healthcare facilities;

2. Facilitate the use of telemedicine and electronic health records;

3. Serve economically distressed areas of the state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;

4. Provide for scalability to transmission speeds of at least 100 megabits per second download and 10 megabits per second upload;

5. Include a component to actively promote the adoption of the newly available broadband Internet service in the community;

6. Provide evidence of strong support for the project from citizens, government, businesses, and institutions in the community;

7. Provide access to broadband Internet service to the greatest number of unserved households and businesses;

8. Leverage greater amounts of funding for a project from private sources; or

9. Demonstrate consistency with the strategic plan adopted under s. 288.9961.

(b) The office must endeavor to award grants to qualified applications of all regions of the state.

(9)(a) The office may not award any grant to an otherwise eligible grant applicant to provide broadband Internet service in a project area for which any other federal funding has been awarded.

(b) A grant awarded under this section may not be used to serve any retail end user that already has access to broadband

Internet service.

(c) A grant awarded under this section, when combined with any state or local funds, may not fund more than 50 percent of the total cost of a project.

(d) A single project may not be awarded a grant in excess of $5 million.

(10) For each grant awarded, the office shall enter into an agreement with the applicant. The agreement must specify the total amount of the grant, performance conditions that must be met to obtain the grant, the schedule of payment, and sanctions that would apply for failure to meet performance conditions, including, but not limited to, requiring the return of grant funds.

(11) By January 1, 2023, and each year thereafter, the office shall publish on its website and provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives:

(a) A list of all grant applications received during the previous fiscal year and for each application:

1. The results of any quantitative weighting or scoring system the office used to award grants or rank the applications.

2. The grant amounts requested.

3. The grant amounts awarded, if any.

4. A report on the progress of each grant recipient in acquiring and installing infrastructure that supports the

provision of broadband Internet service in the project areas for which that grant was awarded and in securing adoption of such service in each project area.

(b) All written challenges filed during the previous year and the results of those challenges.

Section 4. Subsection (7) of section 338.2278, Florida Statutes, is amended to read:

338.2278 Multi-use Corridors of Regional Economic Significance Program.—

(7) Funds that result from increased revenues to the State Transportation Trust Fund derived from the amendments to s. 320.08 made by chapter 2019-43, Laws of Florida, ~~this act~~ and deposited into the fund pursuant to s. 320.20(5)(a) must be used as follows:

(a) ~~For the 2019-2020 fiscal year, $45 million shall be retained in the State Transportation Trust Fund, and the remaining funds shall be transferred to the General Revenue Fund.~~

~~(b)~~ For the 2020-2021 fiscal year, $90 million shall be retained in the State Transportation Trust Fund, and the remaining funds shall be transferred to the General Revenue Fund.

(b) ~~(c)~~ For the 2021-2022 fiscal year and each fiscal year thereafter, 50 percent of the funds shall be transferred to the State Economic Enhancement and Economic Development Trust Fund

within the Department of Economic Opportunity for use by the Florida Office of Broadband as provided in s. 288.9961 and ~~all of~~ the remaining funds shall be retained in the State Transportation Trust Fund.

Section 5. Paragraph (b) of subsection (2) of section 339.0801, Florida Statutes, is amended to read:

339.0801 Allocation of increased revenues derived from amendments to s. 319.32(5)(a) by ch. 2012-128.—Funds that result from increased revenues to the State Transportation Trust Fund derived from the amendments to s. 319.32(5)(a) made by this act must be used annually, first as set forth in subsection (1) and then as set forth in subsections (2)-(5), notwithstanding any other provision of law:

(2)

(b) Beginning with the 2022-2023 fiscal year and annually thereafter, $35 million shall be transferred to Florida's Turnpike Enterprise, to be used in accordance with s. 338.2278, with preference to feeder roads, interchanges, and appurtenances that create or facilitate multiuse corridor access and connectivity. Of those funds, and to the maximum extent feasible, up to $5 million annually may be used for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor. The department shall give priority consideration to broadband infrastructure projects located in any area designated as a rural area of opportunity

under s. 288.0656 and adjacent to a multiuse corridor. The department shall consult with the Florida Office of Broadband within the Department of Economic Opportunity to ensure that the broadband infrastructure projects are consistent with the strategic plan required by s. 288.9961.

Section 6. This act shall take effect July 1, 2021.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert: An act relating to broadband Internet deployment; creating pt. XV of ch. 288, F.S.; relating to the Florida Office of Broadband; renumbering and amending s. 364.0135, F.S.; revising and providing definitions relating to broadband Internet service; revising duties of the Florida Office of Broadband; providing rulemaking authority; creating s. 288.9962, F.S.; establishing the Broadband Opportunity Program within the Department of Economic Opportunity; providing for administration of the program; providing requirements for grant awards; providing for eligibility; providing application requirements; requiring the publication of certain information related to grant applications and grant awards on a website; authorizing grant applications to be challenged under certain circumstances; providing procedures to be used by the office in evaluating challenges; providing direction for the office in prioritizing

funding grants; requiring that office to enter into an agreement containing specified information with each grant recipient; requiring the office to publish a specified report annually on its website; requiring a report to the Governor and Legislature with specified information; amending s. 338.2278, F.S.; providing for the transfer of certain funds from the State Transportation Trust Fund to the State Economic Enhancement and Economic Development Trust Fund within the Department of Economic Opportunity; providing for the use of such funds by the Florida Office of Broadband; amending s. 339.0801, F.S.; requiring the Department of Transportation to consult with the Florida Office of Broadband to ensure that specified projects are consistent with a strategic plan; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 839 State Preemption of Energy Infrastructure Regulation
SPONSOR(S): Fabricio
TIED BILLS: **IDEN./SIM. BILLS:** SB 856

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		Willson MW	Keating CK
2) Local Administration & Veterans Affairs Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Municipalities and counties derive broad home rule authority from the Florida Constitution and general law. Special districts are separate local governmental entities that exist for specific purposes. General law authorizes local governments to regulate a variety of matters related to energy infrastructure, including the ability to own and operate their own energy infrastructure.

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.

The bill prohibits local governments from implementing any law, ordinance, regulation, policy, or resolution that prohibits, restricts, or requires, or that has the effect of prohibiting, restricting, or requiring, the construction of new energy infrastructure or the expansion, upgrading, or repair of existing energy infrastructure, or imposing any requirement regulating energy infrastructure that is more stringent than state law or DEP rule.

Additionally, the bill expressly preempts the regulation of energy infrastructure to the state, and specifies that any existing or future law, ordinance, regulation, policy, or resolution that is contrary to the preemption is void.

The bill defines "energy infrastructure" as "infrastructure supporting the production, importation, storage, and distribution of natural gas, petroleum, petroleum products, electricity, renewable fuels, solar energy, wind energy, biomass energy, hydrogen energy, and geothermal energy."

The fiscal impact of the bill is indeterminate. See Fiscal Comments Section.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Local Government Powers[1]

Article VIII of the Florida Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties[2] and has the authority to choose to create municipalities.[3] The Florida Constitution recognizes two types of county government in Florida: those operating under a county charter and those without a charter. Florida currently has 67 counties.[4] County ordinances must be filed with the custodian of state records, and take effect at the time provided by law.[5]

Noncharter Counties

A county without a charter has such power of self-government *as provided* by general[6] or special law, and may enact county ordinances not inconsistent with general law.[7] General law authorizes counties "the power to carry on county government"[8] 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."[9]

Section 125.01, F.S., provides that the legislative and governing body of a county shall have the power to carry on county government and that "to the extent not inconsistent with general or special law, this power includes, among other things, the power to:"

- Prepare and enforce comprehensive plans for the development of the county.
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.
- Establish and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, air pollution control, and navigation and drainage and cooperate with governmental agencies and private enterprises in the development and operation of such programs.
- Establish, merge or abolish municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided a number of essential facilities and municipal services from funds derived from service charges, special assessments, or taxes.
- Levy and collect taxes and special assessments; borrow and expend money; and issue bonds, revenue certificates, and other obligations of indebtedness.
- Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law.
- Enforce the Florida Building Code, and adopt and enforce local technical amendments thereto.

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[1] *See generally* Florida House of Representatives, *Local Government Formation Manual 2018-2020*, Chapter 1.
[2] FLA. CONST. art. VIII, s. 1(a).
[3] FLA. CONST. art. VIII, s. 2(a).
[4] *See* Local Government Formation Manual 2018-2020, Appendix B for a list of these counties and their dates of incorporation.
[5] FLA. CONST. art. VIII, s. 2(i).
[6] ch. 125, Part I, F.S.
[7] FLA. CONST. art. VIII, s. 1(f).
[8] S. 125.01(1), F.S.
[9] S. 125.01(1)(w), F.S.

Section 125.01, F.S., also provides:

- The enumeration of powers herein may not be deemed exclusive or restrictive, but is deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated.
- The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution.

The governing body of a county also has the power to establish, and subsequently merge or abolish, dependent special districts including both incorporated and unincorporated areas.

This delegation of home rule power to noncharter counties is broad.[10] Nevertheless, it is a legislative, not a constitutional, grant of home rule power, and as such is subject to legislative regulation through law in the same manner as is a municipality.[11]

Noncharter counties must organize their governing body either in the traditional commission form or the commission-administrator form of county government, which may be enacted by county ordinance.[12] If an ordinance enacted by a noncharter county conflicts with a municipal ordinance, the county ordinance is not effective within the municipality to the extent of the conflict.[13]

Charter Counties

Pursuant either to general[14] or special law, a county government may be adopted by charter approved by the county voters. A county with a charter has all powers of self-government *not inconsistent* with general law or special law approved by the county voters. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. In the event of a conflict between a county and municipal ordinance, the charter must provide which ordinance prevails.[15]

Article VIII, section 6(e) of the Florida Constitution incorporates by reference sections of the 1885 Constitution, providing unique authorization[16] for specific home rule charters including those of Duval[17] and Miami-Dade Counties.[18] Currently, 20 Florida counties have adopted charters.[19]

The most significant distinction between charter and non-charter county power is the constitutional provision for direct power of self-government to a county upon charter approval, whereas a non-charter county has "such power of self-government as is provided by general or special law." Charter counties possess greater home rule authority than non-charter counties, as follows[20]:

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[10] *Santa Rosa County v. Gulf Power Corp.*, 635 So. 2d 96 (Fla. 1st DCA. 1994).
[11] David G. Tucker, *A Primer On Counties and Municipalities - Part 1,* 81 FLA. BAR J. 49 (2007).
[12] *See* ss. 125.01(1), 125.72, F.S.
[13] *Id.*
[14] S. 125.60, F.S.
[15] FLA. CONST. art. VIII, s. 1(g).
[16] Article VIII, section 6(e) of the Florida Constitution, states that specific provisions for Duval, Miami-Dade, Monroe, and Hillsborough Counties "shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article."
[17] The consolidated government of the City of Jacksonville was created by Ch. 67-1320, Laws of Fla., adopted pursuant to article VIII, section 9 of the 1885 Florida Constitution.
[18] Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, section 11(5) of the 1885 Florida Constitution, now incorporated by reference in article VIII, section 6(e) of the 1968 Florida Constitution, further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami-Dade Charter can only be altered through constitutional amendment, general law, or County actions approved by referendum. *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).
[19] Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. Local Government Formation Manual 2018-2020, p. 4.
[20] *Id.* at 4.

- A special act of the Legislature may not diminish the home rule powers of a charter county unless the act is approved by electors in the county.[21]
- A county's charter may authorize the county to regulate an activity on a countywide basis and provide that the county regulation prevails over any conflicting municipal ordinance.[22]
- A charter county may levy any tax within its jurisdiction that is authorized by general law for a municipality unless the general law prohibits levy by a county.[23]

Municipalities[24]

A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

Article VIII, section 2 of the Florida Constitution provides that municipalities "shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.[25]

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,[26] acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.[27] 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.[28] Pursuant to these powers, approximately 32 Florida municipalities own, operate, and control electric utilities, and 26 municipalities own, operate and control natural gas utilities.

Currently, there are approximately 412 municipalities in Florida.[29] With the exception of Miami-Dade County, the Legislature is authorized to establish or abolish municipalities or amend their charters by general or special law.[30] In Miami-Dade County, the Board of County Commissioners has exclusive authority to provide a method for establishing new municipalities and prescribing their jurisdiction and powers.[31]

Special Districts[32]

Special districts are separate governmental entities existing for specific purposes and having substantial fiscal and administrative independence from general purpose governments. Special districts have existed in the United States for over 200 years and are found in every state and the District of Columbia.

In Florida, special districts perform a wide variety of functions, such as providing fire protection services, delivering urban community development services, and managing water resources. Special districts typically are funded through ad valorem taxes, special assessments, user fees, or impact fees. The Uniform Special District Accountability Act, ch. 189, F. S., generally governs the creation and

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[21] FLA. CONST. art. VIII, s. 1(g).
[22] *Id.*
[23] *McLeod v. Orange County,* 645 So. 2d 411, 413 (Fla. 1994); *State ex rel. Volusia County v. Dickerson,* 269 So. 2d 9, 11 (Fla. 1972).
[24] *See generally* Local Government Formation Manual 2018-2020, Chapter 2.
[25] FLA. CONST. art. VIII, s. 2(b).
[26] S. 166.011, F.S.
[27] Local Government Formation Manual 2018-2020, p. 16.
[28] S. 166.021(4), F.S.
[29] *See* Local Government Formation Manual 2018-2020, Appendix E for a list of these cities and their dates of incorporation.
[30] Local Government Formation Manual 2018-2020, p. 15.
[31] FLA. CONST. art. VIII, s. 6(e), incorporating 1885 FLA. CONST. art. VIII, s. 11(e).
[32] *See generally* Local Government Formation Manual 2018-2020, Chapter 5.

operations of special districts; however, other general laws may more specifically govern the operations of certain types of special districts.

As of February 28, 2021, there are 628 active dependent[33] special districts and 1,158 active independent special districts in Florida.[34] Community development districts are the most frequently created form of independent special district. Other common special districts in Florida include drainage and water control districts, fire control districts, and community redevelopment districts.[35] Currently, one special electric district and four special natural gas districts exist in Florida.[36]

Intergovernmental Utility Authorities

The Florida Interlocal Cooperation Act of 1969 (Act) allows local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.[37] The Act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.[38] Under such an agreement, the local governmental units may create a separate legal or administrative entity "to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities."[39]

In 1978, the Florida Municipal Power Agency (FMPA) was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities.[40] Through various joint power supply projects[41], it supplies all of the electrical power needs of 13 member utilities (referred to as "All-Requirements Project" or "ARP" members) and some of the power needs for seven other member utilities. Through these projects, FMPA members maintain ownership interests in various electrical power plants throughout Florida. FMPA manages the transmission of electrical power over facilities owned by FMPA or its ARP members. FMPA also manages a "power pool" that includes the generating resources of its All-Requirements Project, Lakeland Electric, and Orlando Utilities Commission.[42]

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[33] Dependent special districts are under some control by a single county or municipality, whereas independent special districts do not have any dependent characteristics. A special district that includes more than one county is independent unless it lies wholly within the boundaries of a single municipality.

[34] Florida Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, Official List of Special Districts Online, *State Totals*, http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm (last visited Feb. 28, 2021).

[35] Florida Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, Official List of Special Districts Online, *Special District Function Totals* at http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/special-district-accountability-program (last visited Feb. 28, 2021).

[36] *See* PSC, Facts & Figures of the Florida Utility Industry http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/April%202020.pdf (last visited Feb. 28, 2021).

[37] S. 163.01(2), F.S.

[38] S. 163.01(5), F.S.

[39] S. 163.01(2), F.S.

[40] Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. FLORIDA MUNICIPAL POWER AGENCY, *Members*, http://fmpa.com/about/members/ (last visited Feb. 28, 2021).

[41] Section 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further, section 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.

[42] FLORIDA MUNICIPAL POWER AGENCY. For a list of the projects and the cities participating in each project, see FLORIDA MUNICIPAL POWER AGENCY, *Projects*, https://fmpa.com/power-supply-projects/ (last visited Feb. 28, 2021).

Local Government Authority to Regulate Matters Related to Energy Infrastructure

Local Regulation of Oil and Gas Exploration and Production

While cities and counties do not operate oil and gas permitting programs in Florida, some, through their land use regulations or zoning ordinances, require special exceptions for oil and gas activities or limit oil and gas activities to certain zoning classifications.[43] When authorizing oil and gas exploration and production activities, local governments consider factors such as consistency with their comprehensive plan, injuries to communities or the public welfare, and compliance with zoning ordinances.[44]

In certain instances, DEP may not issue a permit without specified approval. DEP may not issue permits to drill a gas or oil well:

- Within the corporate limits of a municipality without a resolution approving the permit from the governing authority;[45]
- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the permit from the governing authority;[46] or
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the permit from the county commission.[47]

If the proposed oil or gas well is on lands owned by the Board of Trustees of the Internal Improvement Trust Fund (BOT), it may not grant a lease for gas, oil, or mineral rights:

- Within the corporate limits of a municipality without a resolution approving the lease from the governing authority;[48]
- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the lease from the governing authority;[49]
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the lease from the county commission;[50] or
- In Florida's territorial waters in the Gulf of Mexico or Atlantic Ocean.[51]

Six municipalities (Estero, Bonita Springs, Coconut Creek, Cape Coral, Dade, and Zephyrhills) and thirteen counties (Alachua, Bay, Brevard, Broward, Citrus, Indian River, Martin, Miami-Dade, Osceola, Pinellas, St. Lucie, Volusia, Wakulla, and Walton) have banned one or more forms of well stimulation techniques (commonly referred to as 'fracking') by ordinance.[52] Additionally, many other counties and

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[43] *See, e.g.*, Lee County's Land Development Code §§ 34-1651 and 34-145(c).
[44] *Id.*
[45] S. 377.24(5), F.S.
[46] S. 377.24(6), F.S.
[47] S. 377.24(7), F.S.
[48] S. 253.61(1)(a), F.S.
[49] S. 253.61(1)(b), F.S.
[50] S. 253.61(1)(c), F.S.
[51] S. 253.61(1)(d), F.S.
[52] Village of Estero, Ordinance No. 2015-19; Bonita Spring's Land Development Code, Chapter 4, Article VI, Division 15, Section 4-1380; Coconut Creek's Land Development Code, Article IV, Section 13-1000; City of Cape Coral, Ordinance §3.23; City of Dade, Ordinance No. 2016-08; City of Zephyrhills, Ordinance No. 1310-16; Alachua County's Code of Ordinances, §77.13.5; Bay County's Land Development Regulation, §311; Brevard County's Code of Ordinances, §46-375; Citrus County's Code of Ordinances, §66-133; Indian River County's Code of Ordinances, §317.03; Osceola County's Land Development Code, §4.12.3; Broward County's Code of Ordinances, §27-193; Martin County's Code of Ordinances, §67.441; Miami-Dade County's Code of Ordinances, §33-437; Pinellas County's Code of Ordinances, §58-489; St. Lucie County's Code of Ordinances, Policy 6.1.5.7; Volusia County's Code of Ordinances, §50-42; Wakulla County's Code of Ordinances, §6-34; Walton County's Code of Ordinances, §9-156.

cities have passed resolutions supporting various types of bans and moratoriums relating to well stimulation techniques.[53]

Other Specific Authority Related to Energy Infrastructure

Chapter 403, F.S., provides for the regulation of air and water pollution control in Florida, which entails a variety of pollution-related directives to DEP and delegates specific authority to local governments concerning a number of issues.[54] For example, part II of ch. 403, F.S. provides a participatory role to local governments related to power plant and transmission line siting,[55] including a consistency determination with local land use plans, zoning ordinances, local environmental regulations, and other standards[56], and part VIII of ch. 403, F.S., provides a participatory role to local governments related to the siting of natural gas transmission pipelines.[57]

Additionally, general law provides specific authority for certain local governments to:

- Prepare and enforce comprehensive plans for the development of the county.[58]
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.[59]
- Enter into contracts with utility companies or others for the supplying by such utility companies or others of water, electricity, or telephone service to or in connection with any project.[60]
- Construct, operate and maintain gas plants and distribution systems for domestic, municipal and industrial uses;[61] construct such other buildings and facilities as may be required to properly and economically operate and maintain such works;[62] and make all necessary rules or regulations governing the use, control and operation of such works;[63]
- Contract with private companies for the right to construct, operate and maintain gas plants and distribution systems for domestic, municipal and industrial uses, including the privilege or franchise of exercising its corporate powers for such terms of years and upon such conditions and limitations as may be deemed expedient and for the best interest of the municipality, for up to 30 years, provided that the rates or charges to be made by the private company to the individual users of the utility are fixed by the municipality.[64]
- Provide and regulate roads, rights-of-way, and related transportation facilities.[65]
- Enforce the Florida Building Code and adopt and enforce local technical amendments thereto.[66]

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[53] *See* Food & Water Watch, *Local Regulations Against Fracking*, http://www.foodandwaterwatch.org/insight/local-resolutions-against-fracking#florida (last visited Feb. 28, 2021). The page shows a list of local governments that passed resolutions against fracking.

[54] Section 403.021(4), F.S., declares that "local and regional air and water pollution control programs are to be supported to the extent practicable as essential instruments to provide for a coordinated statewide program of air and water pollution prevention, abatement, and control for the securing and maintenance of appropriate levels of air and water quality" and s. 403.061(18), F.S., directs DEP to "Encourage local units of government to handle pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance therefor."

[55] Section 403.506(3), F.S., states that "the filing of an application shall not prevent an electric utility from seeking separate licenses for facilities that are necessary to construct the electrical power plant. Licenses, permits, or approvals issued by any state, regional, or local agency for such facilities shall be incorporated by the department into a final certification upon completion of construction." Section 403.50665, F.S.,

[56] Ss. 403.50655, F.S. 403.507(2)(a)3., F.S., 403.526(2)(a)5., F.S.

[57] Section 43.9405, F.S. states that "Except as otherwise provided in this section, the exemption of a natural gas transmission pipeline under ss. 403.9401-403.9425 does not constitute an exemption for the natural gas transmission pipeline from other applicable permitting processes under other provisions of law or local government ordinances." Additionally, s. 403.941, F.S., provides that "Each local government in which the natural gas transmission pipeline or natural gas transmission pipeline corridor will be located shall prepare a report as to the impact of each proposed natural gas transmission pipeline or corridor on matters within its jurisdiction, including the consistency of the proposed natural gas transmission pipeline or corridor with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed natural gas transmission pipeline or corridor, including local comprehensive plans, zoning regulations, land development regulations, and any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means"

[58] S. 125.01(1)(g), F.S.

[59] S. 125.01(1)(h), F.S.

[60] S. 125.012(19), F.S.

[61] S. 180.06(8), F.S.

[62] S. 180.06(9), F.S.

[63] S. 180.13, F.S.

[64] S. 180.14, F.S.

[65] S. 125.01(1)(m), F.S.

[66] S. 125.01(1)(bb), F.S.

- To adopt, revise, and amend, from time to time, appropriate ordinances, rules, and regulations reasonably necessary to maintain air quality standards established pursuant to state and federal law, including the federal Clean Air Act.[67]
- License the use of gas and power lines in right-of-ways.[68]
- Issue development permits and orders.[69]
- Code enforcement.[70]

Interlocal Service Boundary Agreements[71]

As an alternative process for annexation, the respective governing bodies of counties, municipalities, or independent special districts may enter into an interlocal service boundary agreement, jointly determining how services are provided to residents and property.[72] The statute creates a more flexible process for adjusting municipal boundaries and addresses a wider range of the effects of annexation. The purpose is to encourage intergovernmental coordination in planning, service delivery, and boundary adjustments and to reduce conflicts and litigation between local entities. Local governments may develop their own process for reaching an interlocal service boundary agreement meeting certain requirements or use the process provided in statute.

One issue that may be addressed in an interlocal service boundary agreement is identifying services and infrastructure not currently provided by an electric utility or a natural gas transmission company (the law does not affect territorial agreements between electric or public utilities or affect the determination of territorial disputes by the Florida Public Service Commission).

The agreement may address other issues related to service delivery and include the transfer of services and infrastructure, fiscal compensation to one county, municipality, or independent special district from another local government or special district, and provide for the joint use of facilities and colocation of services.[73] The agreement may require the municipality to send the county a report on its planned service delivery.[74] Finally, an interlocal service boundary agreement may be valid for up to 20 years, must include a provision requiring periodic review, and must require renegotiations to begin at least 18 months before the termination date.[75]

The ability of counties and municipalities to negotiate interlocal service boundary agreements does not impair any existing franchise agreement or contract without the consent of the franchisee or contracting party. Local governments retain their authority to negotiate franchise agreements for the use of public rights-of-way and providing service.[76]

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[67] S. 125.275, F.S.
[68] S. 125.42, F.S.
[69] Ss. 125.022, F.S. and 166.033, F.S.
[70] S. 166.0415, F.S.
[71] *See generally* Local Government Formation Manual 2018-2020, Chapter 3, Part XII.
[72] Ch. 171, part II, F.S
[73] S. 171.203(6)(g)-(h), F.S.
[74] S. 171.203(6)(i), F.S.
[75] S. 171.203(12), F.S.
[76] *See* S. 171.203(19)-(20), F.S. "This part does not impair any existing franchise agreement without the consent of the franchisee, any existing territorial agreement between electric utilities or public utilities under chapter 366, or the jurisdiction of the Public Service Commission to resolve a territorial dispute involving electric utilities or public utilities in accordance with s. 366.04. In addition, an interlocal agreement entered into under this section has no effect in a proceeding before the Public Service Commission involving a territorial dispute. A municipality or county shall retain all existing authority, if any, to negotiate a franchise agreement with any private service provider for use of public rights-of-way or the privilege of providing a service"

State Regulation of Energy Infrastructure

Oil and Gas Exploration and Production

The Department of Environmental Protection's (DEP) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division) oversees permitting for oil and gas drilling, production, and exploration within Florida through its Oil and Gas Program (Program).[77] The Program's primary responsibilities include conserving and controlling the state's oil and gas resources and products; protecting the correlative rights of landowners, owners and producers of oil and gas resources and products, and others interested in these resources and products; safeguarding the health, property, and public welfare of the state's residents; and protecting the environment.[78] DEP addresses these concerns through a system of permits and field inspections to ensure compliance.

DEP must adopt rules and issue orders to implement and enforce the Program.[79] The rules and orders must ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, or during the injection of gas into and recovery of gas from a natural gas storage reservoir.[80] DEP must adopt rules and orders for the following purposes:

- To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the pollution of the fresh, salt, or brackish waters or the lands of the state and to protect the integrity of natural gas storage reservoirs;
- To prevent the alteration of the sheet flow of water in any area;
- To require that appropriate safety equipment be installed to minimize the possibility of an escape of oil or other petroleum products in the event of accident, human error, or a natural disaster during drilling, casing, or plugging of any well and during extraction operations;
- To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another;
- To prevent the intrusion of water into an oil or gas stratum from a separate stratum;
- To require a reasonable bond, or other form of security acceptable to the department, conditioned upon the performance of the duty to plug properly each dry and abandoned well and the full and complete restoration by the applicant of the area over which geophysical exploration, drilling, or production is conducted to the similar contour and general condition in existence prior to such operation;
- To require and carry out a reasonable program of monitoring or inspection of all drilling operations, producing wells, or injecting wells, including regular inspections by division personnel;
- To require the making of reports showing the location of all oil and gas wells; the making and filing of logs; the taking and filing of directional surveys; the filing of electrical, sonic, radioactive, and mechanical logs of oil and gas wells; if taken, the saving of cutting and cores, the cuts of which shall be given to the Bureau of Geology; and the making of reports with respect to drilling and production records;
- To prevent wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring leases, property, or natural gas storage reservoirs;
- To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.
- To require the operation of wells with efficient gas-oil ratio, and to fix such ratios;
- To prevent "blowouts," "caving," and "seepage;"
- To prevent fires;

[77] The Oil and Gas Program is governed by part 1 of ch. 377, F.S., and chs. 62C-25 through 62C-30, F.A.C.
[78] S. 377.06, F.S.
[79] S. 377.22(2), F.S.
[80] *Id.*

- To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and storage and transportation equipment and facilities;
- To regulate the "shooting," perforating and chemical treatment of wells;
- To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations;
- To regulate gas cycling operations;
- To regulate the storage and recovery of gas injected into natural gas storage facilities;
- To, if necessary, determine, limit, and prorate the production of oil or gas, or both, from any pool or field in the state;
- To require certificates of clearance or tenders in connection with the transportation or delivery of oil or gas, or any product;
- To regulate the spacing of wells and to establish drilling units;
- To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage;
- To require that geophysical operations requiring a permit be conducted in a manner which will minimize the impact on hydrology and biota of the area, especially environmentally sensitive lands and coastal areas;
- To regulate aboveground crude oil storage tanks in a manner which will protect the water resources of the state; and
- To act in a receivership capacity for fractional mineral interests for which the owners are unknown or unlocated and to administratively designate the operator as the lessee.[81]

DEP possesses the power and authority to issue permits:

- For the drilling for, exploring for, or production of oil, gas, or other petroleum products that are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.[82]
- To explore for and extract minerals that are subject to extraction from the land by means other than through a well hole.[83]
- To establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.[84]

DEP may not permit to drill a well in search of oil or gas:

- In Florida's territorial waters in the gulf of Mexico or Atlantic Ocean;[85]
- In bays or estuaries;[86]
- Within one mile of coastline;[87]
- Within 1 mile of seaward boundary of any local, state, or federal park or aquatic or wildlife preserve;[88] and
- Within 1 mile inland from Gulf, Atlantic, any bay, or any estuary 1 mile of any freshwater lake, river, or stream unless the DEP is satisfied that the natural resources of such bodies of water and shore areas of the state will be adequately protected in the event of accident or blowout.[89]

DEP monitors and inspects drilling operations, producing wells, or injecting wells.[90] Division staff working in the field offices inspect all permitted activities. Each permit issued by DEP must contain an agreement that the permit holder will not prevent inspection by Division personnel at any time.[91]

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[81] Id.
[82] S. 377.242(1), F.S.
[83] S. 377.242(2), F.S.
[84] S. 377.242(3), F.S.
[85] Ss. 377.24(9) and 377.242(1)(a)5., F.S.
[86] S. 377.242(1)(a)1., F.S.
[87] S. 377.242(1)(a)2., F.S.
[88] S. 377.242(1)(a)3., F.S.
[89] S. 377.242(1)(a)4., F.S.
[90] Section 377.22(2)(g), F.S.
[91] Section 377.242, F.S.

Well Stimulation ("Fracking")

Well stimulation refers to any action taken by a well operator to increase the inherent productivity of an oil or gas well.[92] Common examples of well stimulation treatments are hydraulic fracturing and acid fracturing. Both hydraulic fracturing and acid fracturing involve the pressurized injection of fluids and chemicals to create fractures within a rock formation. The fractures then allow for more oil and gas to escape the rock formation and migrate up the well.

DEP's rules currently require an operator to notify DEP before beginning any workover operation on an oil or gas well.[93] A workover is defined as "an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates."[94] Thus, an operator performing a well stimulation need not apply for a separate permit authorizing the well stimulation, but must only provide notification to DEP before beginning the operation.

Florida Public Service Commission

The Florida Public Service Commission ("PSC" or "commission") is an arm of the legislative branch of government.[95] The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.[96] In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[97]

The PSC monitors the safety and reliability of the electric power grid[98] and may order the addition or repair of infrastructure as necessary.[99] Further, the PSC reviews application to determine the need for certain new electrical power plants[100] and certain large transmission lines[101] as part of DEP's siting process.

Florida Solar Energy Center

In order to develop a sound energy policy relating to incident solar energy[102] in Florida and ensure that solar energy systems manufactured or sold within the state are effective and represent a high level of quality, the Legislature formed the Florida Solar Energy Center (FSEC)[103] in 1976 to serve as the state's energy research institute.[104]

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[92] Keith B. Hall, *Recent Developments in Hydraulic Fracturing Regulation and Litigation*, 29 J. LAND USE & ENVTL. L. 29, 22 (2013).
[93] R. 62C-29.006(1), F.A.C.
[94] R. 62C-25.002(61), F.A.C.
[95] s. 350.001, F.S.
[96] FLA. PUBLIC SERVICE COMMISSION, *The PSC's Role*, http://www.psc.state.fl.us (last visited Feb. 26, 2021).
[97] *Id.* The PSC regulated five investor-owned electric companies, eight investor-owned natural gas utilities, and 151 investor-owned water and/or wastewater utilities. While the PSC does not fully regulate publicly owned municipal or cooperative electric utilities, the Commission does have jurisdiction, with regard to rate structure, territorial boundaries, bulk power supply operations, and planning, over 35 municipally owned electric systems and 18 rural electric cooperatives. The PSC has jurisdiction, with regard to territorial boundaries and safety, over 27 municipally owned natural gas utilities and 4 gas districts, and also exercises safety authority over all electric and natural gas systems operating in the state. FLA. PUBLIC SERVICE COMMISSION, 2020 ANNUAL REPORT 14 (2020), http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf. (last visited Feb. 28, 2021).
[98] S. 366.04(5) & (6), F.S.
[99] S. 366.05(1) & (8), F.S.
[100] S. 403.519, F.S.
[101] S. 403.537, F.S.
[102] "Incident" in the study of physics means "the striking of a ray of light, beam of electrons, etc., on a surface;" therefore, in this instance, "incident solar energy" means solar energy from solar rays striking a building, etc. Dictionary.com, LLC, *Incidence*, http://www.dictionary.com/browse/incidence (last visited Feb. 28, 2021).
[103] S. 377.705(2)(a)-(b), F.S.
[104] Florida Solar Energy Center, *About Us*, http://www.fsec.ucf.edu/en/about/index.htm (last visited Feb. 26, 2021).

All solar energy systems manufactured or sold in Florida must meet the standards set by FSEC.[105] FSEC also accepts standards and certifications for solar thermal products from the Solar Rating & Certification Corporation (SRCC) [106] and the International Association of Plumbing and Mechanical Officials[107] (IAPMO).[108] In addition, the current version of the Code provides that solar energy systems installed in Florida are required to meet certain standards.[109]

Florida Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services (FDACS) is responsible for the administration of a number of programs relating to energy infrastructure, including the Renewable Energy and Energy-Efficient Technologies Grants Program,[110] the Energy efficiency and conservation clearinghouse,[111] the Florida Green Government Grants Act,[112] the Natural gas fuel fleet vehicle rebate program,[113] as well as statutory authorization to allocate federal energy conservation bonds[114] and to post information on its website relating to alternative fueling stations or electric vehicle charging stations that are available for public use.[115]

Preemption

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.[116]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[117] Express preemption of a field by the

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[105] s. 377.705(4)(d), F.S.
[106] SRCC produces solar thermal standards and certifications which are widely used globally. Solar Rating & Certification Corporation, *About Us – General*, https://solar-rating.org/ (last visited Feb. 28, 2021).
[107] IAPMO certifies solar thermal products for use in North America. International Association of Plumbing and Mechanical Officials, *Solar Product Certification*, http://www.iapmort.org/Pages/SolarCertification.aspx (last visited Feb. 28, 2021).
[108] Florida Solar Energy Center, *Testing and Certification*, http://www.fsec.ucf.edu/En/certification-testing/index.htm (last visited Feb. 28, 2021).
[109] Chapter 14 of the 5th edition of the Florida Building Code (Mechanical), Chapters 9 and 23 of the 5th edition of the Florida Building Code (Residential), Chapter 15 of the 5th edition of the Florida Building Code (Building), and Chapter 4 of the 5th edition of the Florida Building Code (Energy Conservation).
[110] Section 377.804, F.S., is established within FDACS "to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies and innovative technologies that significantly increase energy efficiency for vehicles and commercial buildings."
[111] Section 377.805, F.S., states that "The Office of Energy within the Department of Agriculture and Consumer Services, in consultation with the Public Service Commission, the Florida Building Commission, and the Florida Energy Systems Consortium, shall develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures."
[112] Section 377.808, F.S., directs FDACS to "use funds specifically appropriated to award grants under this section to assist local governments, including municipalities, counties, and school districts, in the development and implementation of programs that achieve green standards. Green standards shall be determined by the department and shall provide for cost-efficient solutions, reducing greenhouse gas emissions, improving quality of life, and strengthening the state's economy."
[113] Section 377.810, F.S., establishes the program within FDACS "to help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state."
[114] S. 37.816, F.S.
[115] S. 377.815, F.S.
[116] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009). Historically, certain types of local action have been found to frustrate the purpose of state law, and, thus, conflict has resulted. Specifically, Florida jurisprudence makes clear that local action cannot 1) provide for more stringent regulation than the state legislation in violation of the express wording of the statute; 2) provide for a more stringent penalty than that allowed by state statute; 3) prohibit behavior otherwise allowed by state legislation; 4) allow behavior otherwise prohibited by state statute; or 5) provide for a different method for doing a particular act than the method proscribed by state legislation.
Generally, a local government can pass more stringent regulations than those provided for by statute. However, if the state legislation expressly forbids a stricter regulation or if the imposition of a stricter regulation frustrates the purpose of the statute, the local government must abstain
[117] *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).

Legislature must be accomplished by clear language stating that intent.[118] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[119] 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.[120]

Effect of the Bill

The bill creates s. 377.707, F.S., relating to state preemption of energy infrastructure regulation.

The bill prohibits local governments from implementing any law, ordinance, regulation, policy, or resolution that prohibits, restricts, or requires, or that has the effect of prohibiting, restricting, or requiring, the construction of new energy infrastructure or the expansion, upgrading, or repair of existing energy infrastructure, or imposing any requirement regulating energy infrastructure that is more stringent than state law or DEP rule.

The bill expressly preempts the regulation of energy infrastructure to the state, and specifies that any existing or future law, ordinance, regulation, policy, or resolution that is contrary to the preemption is void.

The bill defines the term "energy infrastructure" as "infrastructure supporting the production, importation, storage, and distribution of natural gas, petroleum, petroleum products, electricity, renewable fuels, solar energy, wind energy, biomass energy, hydrogen energy, and geothermal energy."

The bill provides a Legislative finding which recognizes that affordable, reliable, and sustainable energy throughout the state is dependent upon energy infrastructure networks extending beyond local government boundaries and recognizes the importance of consumer choice in the energy market.

B. SECTION DIRECTORY:

Section 1 Creates s. 377.707, F.S.; providing a definition; providing legislative findings; intent; prohibiting a local government from regulating energy infrastructure; preempting such regulation to the state;

Section 2 Provides for an effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. *See Fiscal Comments.*

2. Expenditures:

   Indeterminate. *See Fiscal Comments.*

[118] *Mulligan*, 934 So. 2d at 1243.
[119] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).
[120] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate. *See Fiscal Comments.*

2. Expenditures:

   Indeterminate. *See Fiscal Comments.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. *See Fiscal Comments.*

D. FISCAL COMMENTS:

Due to the breadth of the bill's preemption provisions, the potential fiscal impacts to government and the direct economic impact on the private sector cannot be determined.

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:

   Article I, section 10 of the Florida Constitution prohibits the passage of any law which impairs the obligation of contracts. The Florida Supreme Court has held that, relating to the interpretation of substantive changes to statutory law, the general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively but not retroactively.[121] Florida courts have also held that "Even where the Legislature has expressly stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty."[122]

   Current law authorizes local governments to provide and contract for certain services related to energy infrastructure. To the extent that the bill would retroactively abrogate such authority and impair a local government's vested rights or contractual obligations, the bill might impair a local government's ability to satisfy a contractual obligation.

B. RULE-MAKING AUTHORITY:

None.

[121] *Smiley v. State*, 966 So. 2d 330, 336 (Fla. 2007). *See also* Eric Glazer and Louis Goetz, *Florida Community Association Law: Contracts Clause Application In An Ever-Changing Legislative Landscape*, Florida Bar Journal, Vol. 89, No. 8 (Sept./Oct. 2015). "In Florida, all laws are presumed to apply prospectively, unless they are remedial in nature, or designed to clarify law already in effect, and the legislature clearly expresses its intention that the law is to apply retroactively."

[122] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So.3d 873 (Fla. 2010).

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear whether existing state law granting local governments specific authority to regulate in the area of energy infrastructure (as well as the local regulations stemming from such authority) would be rendered void by the bill.

Additionally, the bill prohibits local regulations that "... have the effect of prohibiting, restricting or requiring, the construction of new energy infrastructure or the expansion, upgrading, or repair or existing energy infrastructure ..." This language could have the effect of rendering void a wide array of local regulations that only incidentally affect or are incidentally related to energy infrastructure. Due to the breadth of this language and the variation in local government regulations, these impacts cannot be determined.

It is unclear whether the bill would impact a local government's ability to implement ordinances or policies related to the operation of their own electric and natural gas utility infrastructure.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to state preemption of energy infrastructure regulation; creating s. 377.707, F.S.; providing a definition; providing legislative findings; intent; prohibiting a local government from regulating energy infrastructure; preempting such regulation to the state; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 377.707, Florida Statutes, is created to read:

377.707 State preemption of energy infrastructure regulation.—

(1) As used in this section, the term "energy infrastructure" means infrastructure supporting the production, importation, storage, and distribution of natural gas, petroleum, petroleum products, electricity, renewable fuels, solar energy, wind energy, biomass energy, hydrogen energy, and geothermal energy.

(2) The Legislature recognizes that affordable, reliable, and sustainable energy throughout the state is dependent upon energy infrastructure networks extending beyond local government boundaries and recognizes the importance of consumer choice in the energy market.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(3) A local government is prohibited from implementing any law, ordinance, regulation, policy, or resolution that prohibits, restricts, or requires, or that has the effect of prohibiting, restricting, or requiring, the construction of new energy infrastructure or the expansion, upgrading, or repair of existing energy infrastructure, or imposing any requirement regulating energy infrastructure that is more stringent than state law or department rule. Regulation of energy infrastructure is expressly preempted to the state.

(4) Any existing or future law, ordinance, regulation, policy, or resolution that is contrary to this section is void.

Section 2. This act shall take effect July 1, 2021.

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 839 by Rep. Fabricio
State Preemption of Energy Infrastructure Regulation

AMENDMENT SUMMARY
March 3, 2021

Amendment 1 by Rep. Fabricio (Strike-all amendment):
The strike-all amendment:

- Limits the scope of the bill to "transportation energy infrastructure".

- Defines the term "transportation energy infrastructure".

    - Establishes prohibitions on certain local government regulations and requirements related to transportation energy infrastructure, except as authorized by general law.

- Provides an exception for a local government to adopt, implement, modify, and enforce applicable federal and state requirements for transportation energy infrastructure including safety and building standards, provided it does not conflict with federal or state safety and security requirements for transportation energy infrastructure.

- Provides that any existing or future law, ordinance, regulation, policy, or resolution that is contrary to the bill is void.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Tourism, Infrastructure & Energy Subcommittee

Representative Fabricio offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 377.707, Florida Statutes, is created to read:

377.707 State preemption of transportation energy infrastructure regulation.—

(1) As used in this section, the term "transportation energy infrastructure" means infrastructure supporting the production, import, storage, and distribution of fuels used for transportation including, but not limited to, petroleum, petroleum products, gasoline, diesel fuel, motor fuel,

alternative fuel, marine fuel, aviation fuel, renewable fuel, natural gas, hydrogen, and electricity.

(2) The Legislature finds that affordable, reliable, and sustainable transportation energy throughout the state is dependent upon transportation energy infrastructure networks extending beyond local government boundaries and recognizes the importance of consumer choice in the transportation energy market. Therefore, the regulation of transportation energy infrastructure is expressly preempted to the state.

(3) Except as authorized by general law, a local government is prohibited from:

(a) Adopting or implementing any law, ordinance, regulation, policy, or resolution that prohibits, restricts, or requires, or that has the effect of prohibiting, restricting, or requiring, the construction of new transportation energy infrastructure or the expansion, upgrading, or repair of existing transportation energy infrastructure, or imposing any requirement regulating transportation energy infrastructure that is more stringent than state law or department rule, except for local ordinances regulating underground petroleum storage system construction, operation, and maintenance that were enacted pursuant to s. 376.317(3)(a).

(b) Amending its comprehensive plan, land use map, zoning districts, or land development regulations in a manner that would conflict with an existing transportation energy

infrastructure classification as a permitted and allowable use including, but not limited to, an amendment that causes an existing transportation energy infrastructure to be a nonconforming use, structure, or development.

(c) Imposing transportation energy infrastructure requirements that are more stringent than state law or department rule.

(4) This section does not limit the authority of a local government to adopt, implement, modify, and enforce applicable federal and state requirements for transportation energy infrastructure including safety and building standards. However, the exercise of local authority may not conflict with federal or state safety and security requirements for transportation energy infrastructure.

(5) Any existing or future law, ordinance, regulation, policy, or resolution that is contrary to this section is void.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:
An act relating to state preemption of transportation energy infrastructure regulation; creating s. 377.707, F.S.; providing a definition; providing legislative findings; preempting regulation of transportation energy infrastructure to the state; prohibiting a local government from regulating transportation

energy infrastructure; providing an exception; providing construction; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6059 Composition of the Multi-use Corridors of Regional Economic Significance Program
SPONSOR(S): Shoaf
TIED BILLS: **IDEN./SIM. BILLS:** SB 1590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		Johnson	Keating
2) Commerce Committee			

SUMMARY ANALYSIS

In 2019, the Legislature created the Multi-use Corridors of Regional Economic Significance (M-CORES) program within the Department of Transportation (DOT). The purpose of the program is to revitalize rural communities, encourage job creation, and provide regional connectivity while leveraging technology, enhancing quality of life and public safety, and protecting the environment and natural resources. M-CORES is composed of the following corridors:

- Southwest-Central Florida Connector, extending from Collier County to Polk County.
- Suncoast Connector, extending from Citrus County to Jefferson County.
- Northern Turnpike Connector, extending from the northern terminus of the Florida Turnpike northwest to the Suncoast Parkway.

The bill removes the words "to Jefferson County" from the description of the Suncoast Connector, thus providing that the Suncoast Connector extends from Citrus County without a specified terminus.

The bill does not appear to have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 2019, the Legislature passed CS/SB 7068, creating the Multi-use Corridors of Regional Economic Significance (M-CORES) program within the Department of Transportation (DOT).[1] The purpose of the program is to revitalize rural communities, encourage job creation, and provide regional connectivity while leveraging technology, enhancing quality of life and public safety, and protecting the environment and natural resources. The objective of the program is to advance the construction of regional corridors that are intended to accommodate multiple modes of transportation and multiple types of infrastructure. The intended benefits of the program include, but are not limited to, addressing issues such as:

- Hurricane evacuation.
- Congestion mitigation.
- Trade and logistics.
- Broadband, water, and sewer connectivity.
- Energy distribution.
- Autonomous, connected, shared, and electric vehicle technology.
- Other transportation modes.
- Mobility as a service.
- Availability of a trained workforce skilled in traditional and emerging technologies.
- Protection or enhancement of wildlife corridors or environmentally sensitive areas.
- Protection or enhancement of primary springs protection zones and farmland preservation areas.[2]

M-CORES is composed of the following corridors:

- Southwest-Central Florida Connector, extending from Collier County to Polk County.
- Suncoast Connector, extending from Citrus County to Jefferson County.
- Northern Turnpike Connector, extending from the northern terminus of the Florida Turnpike northwest to the Suncoast Parkway.[3]

The M-CORES program required DOT to establish task forces for each of the above corridors to serve as a consensus building mechanism regarding each of the corridors. The Final Task Force Reports for each corridor were released in November 2020.[4] Each report identified a series of potential high-level needs for DOT's future evaluation and developed recommendations for how DOT should assess the need for each corridor.[5]

Effect of the Bill

The bill removes the words "to Jefferson County" from the description of the Suncoast Connector in s. 338.2278(2)(b), F.S.; thus, providing that the Suncoast Connector extends from Citrus County without a specified terminus.

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[1] Ch. 2019-43, L.O.F.
[2] S. 338.2278(1), F.S.
[3] S. 338.2278(2), F.S.
[4] Copies of all three task force reports are available at: https://floridamcores.com/ (last visited February 24, 2021)
[5] M-CORES Suncoast Connector Task Force Report, p. 6. Available at https://floridamcores.com/wp-content/uploads/2020/11/M-CORES_SCC_FinalTaskForceReport.pdf (last visited February 24, 2020)

B. SECTION DIRECTORY:

Section 1 Amends s. 338.2278, F.S., relating to Multi-use Corridors of Regional Economic Significance.

Section 2 Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to impact state government revenues.

2. Expenditures:

   The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   The bill does not appear to impact local government expenditures.

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 impact county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

This bill does not provide a grant of rulemaking, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

By removing the terminus for the Suncoast Connector, the bill creates ambiguity as to the desired direction and purpose of that corridor.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to the composition of the Multi-use Corridors of Regional Economic Significance Program; amending s. 338.2278, F.S.; removing a certain regional corridor terminus from the program; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (2) of section 338.2278, Florida Statutes, is amended to read:

338.2278 Multi-use Corridors of Regional Economic Significance Program.—

(2) The program is composed of all of the following corridors:

(b) Suncoast Connector, extending from Citrus County ~~to Jefferson County~~.

Section 2. This act shall take effect July 1, 2021.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.