TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 139 by Rep. Fernandez-Barquin
ELECTRONIC TRANSACTIONS for TITLE CERTIFICATES and REGISTRATIONS

AMENDMENT SUMMARY
MARCH 9, 2021

Amendment 1 (Strike-All Amendment) by Rep. Fernandez-Barquin (# 150159)

- Removes provisions regarding motor vehicle titling.
- Removes provisions regarding electronic signatures.
- Authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) and tax collectors to use e-mail addresses to perform their statutory duties.
- Provides that email addresses must be maintained in a manner to ensure that the addresses are exempt from public records requirements.
- Requires tax collectors and third-party contractors with access to DHSMV systems to enter into a memorandum of understanding with DHSMV regarding the use of DSHMV's computer systems.
- Authorizes the existing fee charged on certain motor vehicle registrations to be used to ensure ancillary technology and other tax collection systems protect customer privacy data.
- Requires DHSMV, upon a tax collector's request, to provide certain ancillary technology to integrate other tax collection systems with data access and uniform interface functionalities.
- Provides specific purposes that DHSMV data may be used for.
- Requires certain data access and uniform interface functionalities to be developed by July 1, 2023.
- Defines the term "registration renewal transactions."

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 451 by Rep. Hage
SPECIALTY LICENSE PLATES

AMENDMENT SUMMARY
MARCH 9, 2021

Amendment 1 by Rep. Hage (# 631941)

- Authorizes proceeds from the sale of the Honor Flight license plate to be spent outside of the State of Florida.

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 613 by Rep. Aloupis
TAX COLLECTOR and LICENSE PLATE AGENCY OPERATIONS

AMENDMENT SUMMARY
MARCH 9, 2021

Amendment 1 by Rep. Aloupis (# 768101)

- Relocates provisions of the bill that authorize license plate agencies to provide driver license services.
- Authorizes all tax collectors, effective October 1, 2021, to contract with one or more license plate agencies for specified driver license services.
- Requires the license plate agency to enter into an interagency agreement with the Department of Highway Safety and Motor Vehicles to provide driver license services.
- Provides that license plate agents are not authorized to issue driver licenses or identification cards or to possess blank driver licenses and identification cards.
- Requires funds collected from license plate agencies to be deposited into the state treasury in the same time frame as required for county tax collectors.

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 621 by Rep. Williamson
TAX COLLECTORS and THEIR APPROVED AGENTS

AMENDMENT SUMMARY
MARCH 3, 2021

Amendment 1 (Strike-All Amendment) by Rep. Williamson (# 742277)

- Clarifies that provisions authorizing a tax collector to contract with license plate agents are permissive.
- Provides that the tax collector may determine the additional service charges collected by license plates agents.
- Reorganizes the bill's provisions to place them in statutory order.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1051 Environmental Compliance Costs
SPONSOR(S): Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 964

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		Johnson SRJ	Keating CK
2) Environment, Agriculture & Flooding Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Under current law, investor-owned electric utilities may recover certain costs, such as fuel related expenses and environmental compliance costs, outside of base rates through separate cost recovery charges approved by the Public Service Commission (PSC). Environmental compliance costs are recovered through a statutorily created mechanism known as the Environmental Cost Recovery Clause (ECRC).

The bill revises the definition of "environmental compliance costs" for purposes of the ECRC to include costs or expenses incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a wastewater utility for the construction and operation of a wastewater reuse system that fully or partially satisfies a local government's statutory reclaimed water reuse requirements. The bill also requires at least 50 percent of the reclaimed water the reuse system produces to be used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Ratemaking for Investor-Owned Electric Utilities

The Public Service Commission (PSC) has broad jurisdiction over the rates and service of investor-owned electric utilities (IOUs) in Florida.[1] Under this broad grant of authority, and through more specific grants of authority in chapter 366, F.S., the PSC sets rates for each IOU through five primary components, each of which is established in a separate administrative proceeding:

- Base rates
  - Designed to recover most operations and maintenance expenses, capital investments, and a return on capital investment.
- Fuel and purchased power cost recovery charges
  - Designed to recover the costs of fuel and the energy component of wholesale power purchases.
  - By PSC order, may include recovery of capital investments, including a return on investment, in limited circumstances.
- Capacity cost recovery charges
  - Designed to recover costs of the capacity component of wholesale power purchases.
  - By statute, may include recovery of certain costs related to development of new nuclear power plants, including a return, provided that the costs will be moved into base rates when the new plant becomes operational.[2]
- Environmental cost recovery charges
  - Designed to recover costs to comply with government-mandated environmental standards.
  - By statute, may include recovery of certain capital investments, including a return on investment, provided that these costs may be moved into base rates at the IOU's next rate case.[3]
- Energy conservation and efficiency cost recovery charges
  - Designed to recover costs of implementing PSC-approved energy conservation and efficiency programs.

In each base rate proceeding, the PSC sets a reasonable rate of return on equity for the IOU. After rates are set, the actual rate of return on equity earned by an IOU fluctuates over time as utility revenues and expenses fluctuate.

Environmental Cost Recovery Charges

Separate from base rates, environmental cost recovery charges are set annually, and revenue collected through the Environmental Cost Recovery Clause (ECRC) provides cash flow for the specific operations and maintenance activities and large equipment modifications necessary to comply with environmental laws and regulations.[4]

The ECRC was established by the Legislature in 1993. To implement this law, the PSC established three criteria for approval of recovery through the ECRC:

- The electric utility's costs were prudently incurred after April 13, 1993.

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[1] *See, e.g.,* ss. 366.01, 366.04(1), 366.041, 366.05(1), and 366.06, F.S. There are five public electric utilities in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company. Florida Power & Light Company and Gulf Power Company operate under the same parent company, NextEra Energy, Inc.

[2] S. 366.93, F.S.

[3] S. 366.8255, F.S.

[4] Public Service Commission, Agency Analysis of 2021 House Bill 1051 p. 1 (March 3, 2021).

- The activity is legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the electric utility's last test year upon which rates are based.
- The electric utility's costs are not recovered through some other cost recovery mechanism or through base rates.[5]

Environmental compliance costs are defined in statute as all costs or expenses incurred by an electric utility in complying with environmental laws or regulations.[6] Environmental compliance costs include, but are not limited to:

- Inservice capital investments, including the electric utility's last authorized rate of return on equity;
- Operation and maintenance expenses;
- Fuel procurement costs;
- Purchased power costs;
- Emission allowance costs;
- Direct taxes on environmental equipment;
- Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into between the electric utility and the Department of Environmental Protection (DEP) or the United States Environmental Protection Agency (EPA) for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility; and
- Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and universities.[7]

Reuse of Reclaimed Water

Water conservation and the promotion of reuse of reclaimed water have been established by the Legislature as formal state objectives.[8] Reuse is defined as the deliberate application of reclaimed water for a beneficial purpose.[9] Reclaimed water is defined as water from a domestic wastewater[10] treatment facility that has received at least secondary treatment[11] and basic disinfection[12] for reuse.[13]

Reclaimed water is reused for various purposes, such as irrigation, industrial uses, groundwater recharge, and prevention of saltwater intrusion in coastal groundwater aquifers.[14] Industrial uses of

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[5] *See* PSC Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, Florida Statutes by Gulf Power Company. Section 120.80(13), F.S., exempts cost recovery clause proceedings from rulemaking requirements.

[6] S. 366.8255(1)(d), F.S. Environmental laws or regulations are defined as "all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment."

[7] S. 366.8255(1)(d), F.S.

[8] Ss. 403.064(1) and 373.250(1), F.S.

[9] R. 62-610.200(52), F.A.C.

[10] Section 367.021(5), F.S., defines the term "domestic wastewater" to mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

[11] Rule 62-610.200(54), F.A.C. defines the term "secondary treatment" to mean "wastewater treatment to a level that will achieve the effluent limitations specified in paragraph 62-600.420(1)(a), F.A.C."

[12] Rule 62-600.440(5), F.A.C., provides the requirements for basic disinfection.

[13] Section 373.019(17), F.S.; R. 62-610.200(48), F.A.C.

[14] Martinez, Christopher J. and Clark, Mark W., *Reclaimed Water and Florida's Water Reuse Program*, UF/IFAS Agricultural and Biological Engineering Department (rev. 07/2012), *available at* https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.590.5063&rep=rep1&type=pdf.

reclaimed water include plant wash-down and processing and cooling water.[15] Several power plants throughout the state use reclaimed water for cooling purposes.[16]

Local governments are authorized and encouraged under Florida law to implement programs for the reuse of reclaimed water and are authorized to allocate the costs of such programs in a reasonable manner.[17]

Ocean Outfalls

An ocean outfall occurs when a wastewater treatment facility or other facility discharges treated effluent into coastal or ocean waters.[18] State law prohibits construction of new ocean outfalls and requires that all six ocean outfalls in Florida cease discharging wastewater by December 31, 2025.[19] In addition, wastewater facilities that discharged wastewater through an ocean outfall on July 1, 2008, are required to install a reuse system no later than December 31, 2025.[20] Existing discharges through ocean outfalls were required to meet advanced wastewater treatment requirements[21] by December 31, 2018.[22]

Effect of the Bill

The bill amends 366.8255(1)(d), F.S., by expanding the definition of environmental compliance costs to include the costs or expenses incurred by an electric utility, after July 1, 2021, in constructing and operating a wastewater reuse system pursuant to an agreement between the electric utility and a wastewater utility. The bill requires that the wastewater reuse system fully or partially satisfy a local government's reclaimed water reuse requirements under s. 403.064, F.S.,[23] or s. 403.086, F.S.[24] The bill further requires that at least 50 percent of the produced reclaimed water is used in conjunction with the water requirements of one or more of the utility's electrical generating facilities.

Under the bill, an electric utility that constructs a new wastewater reuse system that satisfies the expanded definition of environmental compliance costs may begin to seek recovery of all its prudently incurred costs and expenses through the ECRC. The electric utility's level of cost recovery through the ECRC may include depreciation of the capital investments in the wastewater reuse system, the associated direct operating and maintenance expenses, and associated indirect expenses such as taxes and a return on its capital investments.

The bill has an effective date July 1, 2021.

B. SECTION DIRECTORY:

Section 1 Amends s. 366.8255, F.S., relating to environmental cost recovery.

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

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[15] Department of Environmental Protection (DEP), *Uses of Reclaimed Water*, https://floridadep.gov/water/domestic-wastewater/content/uses-reclaimed-water (last visited Mar. 5, 2021).
[16] DEP, *Industrial Uses of Reclaimed Water*, https://floridadep.gov/water/domestic-wastewater/content/industrial-uses-reclaimed-water (last visited Mar. 5, 2021).
[17] Section 403.064(9)-(10), F.S.
[18] DEP, *Ocean Outfall Study Final Report* ES-1 (Apr. 18, 2006), *available at* https://floridadep.gov/sites/default/files/OceanOutfallStudy_0.pdf.
[19] S. 403.086(10), F.S.; Ch. 2008-232, L.O.F.
[20] S. 403.086(10)(c), F.S.
[21] S. 403.086(4), F.S.
[22] S. 403.086(10)(b), F.S.
[23] Section 403.064, F.S., relates to the use of reclaimed water.
[24] Section 403.086, F.S., relates to sewage disposal facilities.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. Any increased workload associated with the PSC's review of the ECRC petition is expected to be handled within existing PSC resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may result in higher electric rates for local governments if an electric utility's costs increase due to agreements with wastewater utilities for wastewater reuse systems.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in higher electric rates if an electric utility's costs increase due to agreements with wastewater utilities for wastewater reuse systems.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Due to economies of scale, it is possible that a joint-use wastewater reuse system will result in lower total costs to the electric utility and wastewater utility when compared with two independent actions by these parties. While it is possible that the agreement between the parties could apportion cost and liability responsibilities, the bill does not require the agreement to address these matters. Therefore, the

bill may be read to create an incentive or an expectation that local governments shift cost and liability responsibilities from wastewater utilities to electric utilities.

Additionally, the bill appears to alter the scope of the statute by expanding the definition of environmental compliance costs to include costs for projects that are not imposed on an investor-owned electric utility by an environmental law or regulation. The new provision is not associated with any government environmental mandate but rather includes the construction and operation of a wastewater reuse facility or system based on the decisions and agreements made by private entities.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to environmental compliance costs; amending s. 366.8255, F.S.; redefining the term "environmental compliance costs" to include costs or expenses prudently incurred by an electric utility in complying with specified reclaimed water reuse requirements; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 366.8255, Florida Statutes, is amended to read:

366.8255 Environmental cost recovery.—

(1) As used in this section, the term:

(d) "Environmental compliance costs" includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including, but not limited to:

1. Inservice capital investments, including the electric utility's last authorized rate of return on equity thereon.

2. Operation and maintenance expenses.

3. Fuel procurement costs.

4. Purchased power costs.

5. Emission allowance costs.

6. Direct taxes on environmental equipment.

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

7. Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into on or after the effective date of this act and prior to October 1, 2002, between the electric utility and the Florida Department of Environmental Protection or the United States Environmental Protection Agency for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility.

8. Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and Florida state universities.

9. Costs or expenses prudently incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system that fully or partially satisfies a local government's reclaimed water reuse requirements under s. 403.064 or s. 403.086, where at least 50 percent of the reclaimed water the reuse system produces is used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility.

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

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

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 1051 by Rep. Fernandez-Barquin
ENVIRONMENTAL COMPLIANCE COSTS

AMENDMENT SUMMARY
MARCH 9, 2021

Amendment 1 (Strike-All Amendment) by Rep. Fernandez-Barquin (# 697643)

- Specifies that an electric utility's water reuse project, to be eligible for cost recovery as an environmental compliance cost under the bill, must:
    - Be incurred pursuant to an agreement between the electric utility and a governmental wastewater utility; and
    - Serve to further compliance with environmental laws or regulations that apply to the electric utility.
- Provides that at least 50 percent of the reclaimed water produced by an eligible project must be used in conjunction with the water requirements of an electric generating facility.

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 Fernandez-Barquin offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (1) of section 366.8255, Florida Statutes, is amended to read:

366.8255 Environmental cost recovery.—

(1) As used in this section, the term:

(d) "Environmental compliance costs" includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including, but not limited to:

1. Inservice capital investments, including the electric utility's last authorized rate of return on equity thereon.

2. Operation and maintenance expenses.

3. Fuel procurement costs.

4. Purchased power costs.

5. Emission allowance costs.

6. Direct taxes on environmental equipment.

7. Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into on or after the effective date of this act and prior to October 1, 2002, between the electric utility and the Florida Department of Environmental Protection or the United States Environmental Protection Agency for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility.

8. Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and Florida state universities.

9. Costs or expenses prudently incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a governmental wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system where operation of the system will serve to further compliance with environmental laws

or regulations that apply to the electric utility and where the system fully or partially satisfies a local government's reclaimed water reuse requirements under s. 403.064 or s. 403.086. At least 50 percent of the reclaimed water the system produces must be used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility in order to offset all or part of the electric utility's water use authorized by permit.

Section 2. 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:

A bill to be entitled

An act relating to environmental compliance costs; amending s. 366.8255, F.S.; redefining the term "environmental compliance costs" to include costs or expenses prudently incurred by an electric utility in complying with specified reclaimed water reuse requirements; providing an effective date.

PCS for HB 839

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 839 Preemption of Energy Infrastructure Regulation
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Tourism, Infrastructure & Energy Subcommittee		Willson MW	Keating CK

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 expressly preempts the regulation of transportation 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.

Except as authorized by general law, the bill prohibits local governments from:

- Adopting or implementing any law, ordinance, regulation, policy, or resolution 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 DEP rule, except for certain county ordinances regulating underground petroleum storage tanks enacted before Sept. 1, 1984.
- 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.
- Imposing transportation energy infrastructure requirements that are more stringent than state law or DEP rule.

The bill 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.

The bill defines the term "transportation energy infrastructure" as "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."

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;

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[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 transportation energy infrastructure regulation. The bill expressly preempts the regulation of transportation 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.

Except as authorized by general law, the bill prohibits local governments from:

- 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 energy infrastructure, or
- imposing any requirement regulating transportation energy infrastructure that is more stringent than state law or DEP rule, except for county ordinances regulating underground petroleum storage system construction, operation, and maintenance that were enacted pursuant to s. 376.317(3)(a), F.S.[121]
- 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.
- Imposing transportation energy infrastructure requirements that are more stringent than state law or DEP rule.

The bill 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 bill specifies that the exercise of local authority may not conflict with federal or state safety and security requirements for transportation energy infrastructure.

The bill defines the term "transportation energy infrastructure" as "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."

The bill provides a Legislative finding which recognizes 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.

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[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).
[121] Section 376.317(3)(a), F.S. authorizes county governments to adopt countywide ordinances that regulate underground storage tanks if the ordinance is the same as or more stringent or extensive than any state law regulating underground storage tanks and the original ordinance was legally adopted and in force before September 1, 1984.

B. SECTION DIRECTORY:

Section 1 Creates 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.

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.*

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.[122] 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."[123]

Current law authorizes local governments to provide and contract for certain services related to transportation 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits local regulations that "... have the effect of prohibiting, restricting, or requiring, the construction of new transportation energy infrastructure or the expansion, upgrading, or repair or existing transportation 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 transportation 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

[122] *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."

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

A bill to be entitled

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.

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 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

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