

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 839 Express Preemption of Fuel Retailers and Related Transportation Infrastructure

SPONSOR(S): Local Administration & Veterans Affairs Subcommittee; Tourism, Infrastructure & Energy Subcommittee; Fabricio

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 856

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	12 Y, 6 N, As CS	Willson	Keating
2) Local Administration & Veterans Affairs Subcommittee	15 Y, 0 N, As CS	Renner	Miller
3) Commerce Committee	17 Y, 3 N	Willson	Hamon

SUMMARY ANALYSIS

The Florida Constitution grants county and municipal governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law. Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors. Likewise, municipalities have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law. In contrast, special districts have only those powers expressly authorized by general or special law. County and municipal 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 a municipality, county, special district, or political subdivision from prohibiting the siting, development, or redevelopment of a fuel retailer or the necessary related transportation infrastructure within that specific local government's entire jurisdiction. The bill further preempts any action by a municipality, county, special district, or political subdivision resulting in a *de facto* jurisdiction-wide prohibition against a fuel retailer or the necessary related transportation infrastructure. The bill preempts mandating any required infrastructure on a fuel retailer, including electric vehicle charging stations. The bill does not preempt a municipality, county, special district, or political subdivision from adopting and implementing ordinances, regulations, policies, or resolutions on the siting, development, or redevelopment of fuel retailers or necessary related transportation infrastructure that are consistent with other allowable uses and general law.

The bill defines the term "fuel retailer" as a fuel station or retail site selling fuel to power vehicles. "Related transportation energy infrastructure" is defined as "storage tanks, pipelines, or any related equipment that is necessary to deliver fuel to a fuel retailer or dispense fuel at a fuel retailer."

The bill does not impact state government revenues or expenditures. The fiscal impact of the bill on local government is indeterminate.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants county and municipal governments broad home rule authority. Specifically, counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.¹ Non-charter county governments may exercise those powers of self-government that are provided by general or special law.² Likewise, municipalities³ have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.⁴

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.⁵ Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.⁶ A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.⁷

As of March 23, 2021, there are 627 active dependent⁸ special districts and 1,163 active independent special districts in Florida.⁹ Community development districts are the most frequently created form of independent special district. Other common special districts in Florida include water control districts, fire control districts, and community redevelopment agencies.¹⁰ Currently, one special electric district and four special natural gas districts exist in Florida.¹¹

State Energy Policy

The comprehensive energy policy of the state includes a range of factors for statewide decisions, including the statewide promotion of effective energy use, inclusion of energy considerations in all state, regional, and local planning, considering the energy needs of all sectors of Florida’s economy, and considering the social, economic, and environmental impacts of energy-related activities.¹² The further intent of the Legislature includes promoting efficient, effective, and economical management of

¹ Art. VIII, s. 1(g), Fla. Const.

² Art. VIII, s. 1(f), Fla. Const.

³ 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.”

⁴ Art. VIII, s. 2(b), Fla. Const. See also s. 166.021(1), F.S.

⁵ See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

⁶ See ss. 189.02(1), 189.031(3), and 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

⁷ *2020-2022 Local Gov’t Formation Manual*, p. 62,

<https://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf> (last visited Mar. 15, 2021).

⁸ Dependent special districts are under some control by a single county or municipality. S. 189.012(2), F.S. An independent special district is any district that is not a dependent district. S. 189.012(3), F.S. A special district that includes more than one county is independent unless it lies wholly within the boundaries of a single municipality.

⁹ 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 Mar. 23, 2021).

¹⁰ 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).

¹¹ 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).

¹² S. 377.601(2), F.S.

energy issues and centralizing energy coordination responsibilities.¹³ Under this general law, local governments participate in the development and implementation of statewide energy policy.

Authority Related to Energy Infrastructure

As provided in general law, certain local governments may:

- Prepare and enforce comprehensive plans for the development of the county.¹⁴
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.¹⁵
- Provide and regulate roads, rights-of-way, and related transportation facilities.¹⁶
- Enforce the Florida Building Code and adopt and enforce local technical amendments thereto.¹⁷
- 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.¹⁸
- Issue development permits and orders.¹⁹
- Code enforcement.²⁰

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,²¹ the Energy Efficiency and Conservation Clearinghouse,²² the Florida Green Government Grants Act,²³ the Natural Gas Fuel Fleet Vehicle Rebate Program,²⁴ as well as statutory authorization to allocate federal energy conservation bonds²⁵ and to post information on its website relating to alternative fueling stations or electric vehicle charging stations that are available for public use.²⁶

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. State preemption precludes a local government from exercising authority in that particular area.²⁷

¹³ S. 377.703(1), F.S.

¹⁴ S. 125.01(1)(g), F.S.

¹⁵ S. 125.01(1)(h), F.S.

¹⁶ S. 125.01(1)(m), F.S.

¹⁷ Ss. 125.01(1)(bb), 166.0415, 553.80, F.S.

¹⁸ S. 125.275, F.S.

¹⁹ Ss. 125.022 and 166.033, F.S.

²⁰ S. 166.0415, F.S.

²¹ 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."

²² 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."

²³ 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."

²⁴ 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."

²⁵ S. 377.816, F.S.

²⁶ S. 377.815, F.S.

²⁷ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Mar. 16, 2021).

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.²⁸ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.²⁹ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.³⁰ 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.³¹

Effect of the Bill

The bill creates s. 377.707, F.S., expressly preempting to the state specific aspects of regulating fuel retailers and related transportation infrastructure.

The bill defines the term “fuel retailer” as a fuel station or retail site selling fuel to power vehicles. “Related transportation energy infrastructure” is defined as “storage tanks, pipelines, or any related equipment that is necessary to deliver fuel to a fuel retailer or dispense fuel at a fuel retailer.”

Except as authorized by general law, the bill prohibits a municipality, county, special district, or political subdivision from prohibiting the redevelopment of a fuel retailer or the necessary related transportation infrastructure within that specific local government’s entire jurisdiction. The bill further preempts any action by resulting in a *de facto* jurisdiction-wide prohibition against a fuel retailer or the necessary related transportation infrastructure. The bill preempts mandating any required infrastructure on a fuel retailer, including electric vehicle charging stations. The bill does not preempt a municipality, county, special district, or political subdivision from adopting and implementing ordinances, regulations, policies, or resolutions on the siting, development, or redevelopment of fuel retailers or necessary related transportation infrastructure that are consistent with other allowable uses and general law.

B. SECTION DIRECTORY:

Section 1 Creates s. 377.707, F.S.; providing a definition; preempting regulation of fuel retailers and related transportation infrastructure to the state; prohibiting a local government from regulating fuel retailers and related transportation infrastructure; providing an exception; providing construction.

Section 2 Provides for an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

²⁸ 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).

²⁹ *Mulligan*, 934 So. 2d at 1243.

³⁰ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

³¹ See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The committee substitute differs from HB 839 in the following ways:

- Preempts the regulation of transportation energy infrastructure;
- Revises the definition of “transportation energy infrastructure” to include certain fuels used for transportation;
- Provides the preemption does not apply to local ordinances regulating underground petroleum storage system construction, operation, and maintenance;
- Preempts local government comprehensive plans, land use maps, zoning districts, or other land development regulations that would conflict with an existing transportation energy infrastructure classification as a permitted and allowable use under certain circumstances;
- Preempts local governments from imposing transportation energy infrastructure requirements that are more stringent than state law or department rule;
- 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.

On April 1, 2021, the Local Administration & Veterans Affairs Subcommittee adopted a proposed committee substitute (PCS) and one amendment to the PCS and reported the bill favorably as a committee substitute. The committee substitute differs from CS/HB 839 in the following ways:

- Expressly preempts the regulation of fuel retailers and related transportation infrastructure;
- Provides definitions for “fuel retailer” and “related transportation infrastructure”;

- Prohibits a municipality, county, special district, or political subdivision from prohibiting the redevelopment of a fuel retailer or the necessary related transportation infrastructure within that specific local government's entire jurisdiction;
- Preempts any action resulting in a *de facto* jurisdiction-wide prohibition against a fuel retailer or related and necessary transportation infrastructure;
- Preempts mandating any required infrastructure on a fuel retailer, including electric vehicle charging stations;
- Specifies that a municipality, county, special district, or political subdivision is not prohibited from adopting and implementing ordinances, regulations, policies, or resolutions on the siting, development, or redevelopment of fuel retailers or necessary related transportation infrastructure that are consistent with other allowable uses and general law.
- Makes a technical change.

This analysis is drafted to the committee substitute as approved by the Local Administration & Veterans Affairs Subcommittee.