

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1256

INTRODUCER: Community Affairs Committee and Senator Collins

SUBJECT: Preemption Over Utility Service Restrictions

DATE: April 18, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>Twogood</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1256 preempts local governments from restricting or prohibiting the use of any appliance which uses any type of fuel source, except as necessary to enforce the Florida Building Code or Florida Fire Prevention Code. “Appliance” is defined as any device or apparatus, manufactured and designed to use energy, for which the building code or fire code provides specific requirements.

The bill takes effect July 1, 2023.

II. Present Situation:

Local Government Authority Over Matters Related to Utility and Energy Services

Many of the powers granted to local governments by general law relate, directly or indirectly, to the provision of utility or other energy services to property owners or utility customers in general or to the authority of local governments to provide these services themselves. These powers include the authority to:

- Enforce the Florida Building Code and adopt and enforce local technical amendments thereto.¹
- Enter into contracts with utility companies or others for the supply of water, electricity, or telephone service to or in connection with any project.²

¹ Section 125.01(1)(bb), F.S.

² Section 125.012(19), F.S.

- Construct, operate, and maintain gas plants and distribution systems for domestic, municipal, and industrial uses,³ construct such other buildings and facilities as may be required to properly and economically operate and maintain such works,⁴ and make all necessary rules or regulations governing the use, control and operation of such works;⁵
- License the use of gas and power lines in rights-of-way.⁶
- 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.⁷

Further, general law provides a role for local governments in state proceedings related to the siting of certain new electrical power plants, transmission lines, and natural gas pipelines. Specifically, part II of ch. 403, F.S., requires local governments to provide a report to the Department of Environmental Protection (DEP) as to the consistency of proposed electrical power plants, transmission lines, and natural gas pipelines with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed facility, including local comprehensive plans, zoning regulations, land development regulations, and any applicable local environmental regulations.⁸

Municipalities are authorized to levy a public service tax on the purchase of electricity, natural gas liquefied petroleum gas, and manufactured gas.⁹ Many municipalities own and operate electric utilities and natural gas utilities, and govern the operation of those utilities through ordinance, code, or policies. Some special districts provide these services under policies adopted by each special district.

Preemption Over Utility Service Restrictions

Section 366.032, F.S., expressly preempts the area of restricting utility services, prohibiting a municipality, county, special district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy, or take any other action that restricts or prohibits, or has the effect of restricting or prohibiting, the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to serve customers that these entities are authorized to serve:

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and

³ Section 180.06(8), F.S.

⁴ Section 180.06(9), F.S.

⁵ Section 180.13, F.S.

⁶ Section 125.42, F.S.

⁷ Section 125.275, F.S.

⁸ Sections 403.507(2)(a)3., 403.526(2)(a)5., and 403.941, F.S.

⁹ Section 166.231, F.S.

- Certain propane dealers, dispensers, and gas cylinder exchange operators.¹⁰

An electric utility is one which owns, maintains, or operates an electric generation, transmission or distribution system. An electric utility can be investor-owned, municipally-owned, or a rural electric cooperative.¹¹ There are four investor-owned electric utilities in Florida: Florida Power & Light Company,¹² Duke Energy Florida, Tampa Electric Company, and Florida Public Utilities Corporation.¹³ Additionally, there are thirty-four municipal electric utilities and seventeen rural electric cooperatives.¹⁴ Further, the Florida Municipal Power Agency was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities.¹⁵ Fuels that electric utilities currently use to generate electric power include, but are not limited to: natural gas, nuclear, coal, and renewables like solar and biomass.¹⁶

A natural gas utility is a utility that supplies natural or manufactured gas, or liquefied gas with air admixture, or a similar gaseous substance by pipeline, to or for the public. A natural gas utility can be a gas public utility, gas district, or natural gas utility or municipality.¹⁷ Currently, there are eight investor-owned natural gas utilities, twenty-seven municipally owned natural gas utilities, and four special gas districts.¹⁸

Gas Stove Bans

Multiple cities around the country have placed restrictions on the use of natural gas, propane, and related appliances. Nearly 100 cities and counties in the U.S. have adopted policies, rules, or ordinances that restrict the use of gas-fueled stoves and heaters.¹⁹ In California, 73 cities and counties have adopted building codes that require new residential and commercial buildings to be all-electric.²⁰ Additionally, 26 cities and three states (Maryland, Colorado, and Washington) have building codes in effect, or that are scheduled to go into effect, that will require new construction to be all-electric.²¹

¹⁰ Section 366.032, F.S.

¹¹ Section 366.02, F.S.

¹² FPL acquired Gulf Power Company in 2019 and merged as of January 3, 2022.

¹³ Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry* (2022), p. 4, available at <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202022.pdf> (last visited Mar. 31, 2023).

¹⁴ *Id.* at 11-12.

¹⁵ 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 Mar. 11, 2023).

¹⁶ Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, *supra* at n. 13, p. 3.

¹⁷ Section 366.04(3)(c), F.S.

¹⁸ Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, *supra* at n. 13, p. 13.

¹⁹ Deppisch, Breanne, *Gas stove bans are advancing around the country — here's the rundown*, Washington Examiner (Jan. 12, 2023), available at <https://www.washingtonexaminer.com/policy/energy-environment/gas-stove-bans-rundown> (last visited Mar. 31, 2023).

²⁰ Elizabeth Weise, *Gas stove bans explained: Are natural gas stoves actually a 'hazard'? Why are they suddenly controversial?* USA Today (Feb. 1, 2023), <https://www.usatoday.com/story/news/2023/02/01/gas-stove-bans-explained-controversy-over-health-climate/11126667002/> (last visited Mar. 31, 2023).

²¹ *Id.*

Local Government Authority

The State Constitution grants local 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.²² Those counties operating under a county charter have all powers of self-government not inconsistent with general or with special law approved by the vote of the electors.²³ Likewise, municipalities²⁴ 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.²⁵

There are two ways that a local enactment can be inconsistent with state law and therefore unconstitutional. First, a local government cannot legislate in a field if the subject area has been preempted to the state. Second, in a field where both the state and local government can legislate concurrently, a local government cannot enact an ordinance that directly conflicts with the state statute.²⁶

State law recognizes two types of state preemption: express and implied. Express preemption requires a specific legislative statement of intent to preempt a specific area of law; it cannot be implied or inferred.²⁷ In contrast, implied preemption exists if the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.²⁸ Courts determining the validity of local government ordinances enacted in the face of state preemption, whether express or implied, have found such ordinances to be null and void.²⁹

III. Effect of Proposed Changes:

The bill amends s. 366.032, F.S., to provide that a municipality, county, special district, or other political subdivision of the state, except to the extent necessary to enforce the Florida Building Code or Florida Fire Prevention Code, may not enact or enforce a resolution, ordinance, rule,

²² FLA. CONST. art. VIII, s. 1(f).

²³ FLA. CONST. art. VIII, s. 1(g).

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.”

²⁵ FLA. CONST. art. VIII, s. 2(b); section 166.021(1), F.S.

²⁶ *Orange County v. Singh*, 268 So. 3d 668, 673 (Fla. 2019) (citing *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309, 314 (Fla. 2008)); see also James Wolf & Sarah Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 FLA. BAR J. 92 (2009), available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Mar. 31, 2023).

²⁷ *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Brevard, Inc.*, 3 So. 3d at 1018.

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

²⁹ See, e.g., *National Rifle Association of America, Inc. v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002) (concluding that a City of South Miami local government ordinance, which purported to provide safety standards for firearms, was null and void because the Legislature expressly preempted the entire field of firearm and ammunition regulation when it enacted section 790.33, F.S.).

code, or policy, or take any action, having the effect of restricting or prohibiting the use of any appliances, to include a stove or grill, which utilize any fuel source of energy production.³⁰

“Appliance” is defined as any device or apparatus, manufactured and designed to use energy, for which the building or fire codes provides specific requirements.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

³⁰ The bill refers to “the types of fuel sources of energy production which may be used, delivered, converted, or supplied by” public, private, or natural gas utilities or petroleum gas dealers, as provided by section 366.032(1), F.S. As the referenced statute preempts local governments from limiting the types of fuel that may be utilized by utilities, any fuel source may be included including natural gas, coal, nuclear, wind, solar, and water.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 366.032, Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 5, 2023:

The CS provides an exception for enforcement of the Florida Building or Fire Prevention Codes, and amends “major appliance” to “appliance,” which is defined as a device or apparatus manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.

B. Amendments:

None.